

JAMES BAEHLER (December 18, 2006)
Bensel, et al. v. Allied Pilots Association, et al.
 PLAINTIFFS' DEPOSITION DESIGNATIONS

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In The Matter Of:

Leroy "Bud" Bensel, et al
v.
Air Line Pilots Association, et al

JAMES BAEHLER
December 18, 2006

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JAMES BAEHLER

<p style="text-align: right;">1</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY</p> <p>-----X</p> <p>LEROY "BUD" BENSEL, et al, Plaintiffs,</p> <p style="text-align: right;">Cause No.</p> <p style="text-align: right;">02-2917-JEI-AMD</p> <p>-against-</p> <p>AIRLINE PILOTS ASSOCIATION, Defendant.</p> <p>-----X</p> <p>DEPOSITION OF JAMES BAEHLER New York, New York Monday, December 18, 2006</p> <p>Reported by: Judith A. Frost Job No.: 163435</p> <p>December 18, 2006 11:07 a.m.</p> <p>Deposition of JAMES BAEHLER, held at the offices of Whelan & Tusa, 90 Park Avenue, New York, New York, pursuant to notice, before Judith A. Frost, a Shorthand Reporter and Notary Public of the State of New York.</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td style="width: 5%;">1</td> <td style="width: 85%;">WITNESS</td> <td style="width: 10%;">PAGE</td> </tr> <tr> <td>2</td> <td>JAMES BAEHLER</td> <td></td> </tr> <tr> <td>3</td> <td>Ms. Rodriguez</td> <td>5, 100</td> </tr> <tr> <td>4</td> <td>Mr. Katz</td> <td>44, 105</td> </tr> <tr> <td>5</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td></td> <td></td> </tr> <tr> <td>7</td> <td></td> <td></td> </tr> <tr> <td>8</td> <td></td> <td></td> </tr> <tr> <td>9</td> <td style="text-align: center;">E X H I B I T S</td> <td></td> </tr> <tr> <td>10</td> <td></td> <td></td> </tr> <tr> <td>11</td> <td>NUMBER DESCRIPTION</td> <td>PAGE</td> </tr> <tr> <td>12</td> <td>ALPA 97 Jim Baehler's fees</td> <td>51</td> </tr> <tr> <td>13</td> <td>ALPA 98 Handwritten note</td> <td>62</td> </tr> <tr> <td>14</td> <td>ALPA 99 Newsletter</td> <td>66</td> </tr> <tr> <td>15</td> <td>ALPA 100 Letter dated 10/26/01</td> <td>69</td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </table>	1	WITNESS	PAGE	2	JAMES BAEHLER		3	Ms. Rodriguez	5, 100	4	Mr. Katz	44, 105	5			6			7			8			9	E X H I B I T S		10			11	NUMBER DESCRIPTION	PAGE	12	ALPA 97 Jim Baehler's fees	51	13	ALPA 98 Handwritten note	62	14	ALPA 99 Newsletter	66	15	ALPA 100 Letter dated 10/26/01	69	16			17			18			19			20			21			22			23			24			25		
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<p style="text-align: right;">2</p> <p>A P P E A R A N C E S:</p> <p>TRUJILLO RODRIGUEZ & RICHARDS, LLC Attorneys for Plaintiffs 8 Kings Highway West Haddonfield, New Jersey 08033 856-795-9002 BY: LISA RODRIGUEZ, ESQ. and GREEN JACOBSON & BUTSCH, P.C. Suite 700, Pierre Laclede Center 7733 Forsyth Boulevard St. Louis, Missouri 63105 314-862-6800 BY: ALLEN P. PRESS, ESQ.</p> <p>KATZ & RANZMAN, P.C. Attorneys for Defendants 5028 Wisconsin Avenue, N.W. Washington, DC 20016 202-659-1799 BY: DANIEL M. KATZ, ESQ.</p>	<p style="text-align: right;">4</p> <p>IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be the same and are hereby waived.</p> <p>IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form are reserved until the time of the trial.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer as oath, with the same force and effect as it signed and sworn to before the Court.</p> <p>JAMES BAEHLER, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:</p> <p>THE VIDEOGRAPHER: This is the videotape deposition of James R. Baehler in the matter of Leroy "Bud" Bense, et al, versus Airline Pilots Association.</p> <p>This is in the U.S. District Court of New Jersey. Cause number 02-2917. This deposition is being held at the law offices of Whelan & Tusa in New York City on the</p>																																																																											

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<p>5</p> <p>1 18th of December 2006.</p> <p>2 My name is Barry Forman from the firm</p> <p>3 of Reporting Associates with offices in</p> <p>4 Philadelphia, Pennsylvania and Cherry Hill,</p> <p>5 New Jersey. I am the videographer. The</p> <p>6 court reporter is Judy Frost also from</p> <p>7 Reporting Associates.</p> <p>8 We are going on the record at seven</p> <p>9 minutes past 12 o'clock, and will counsel</p> <p>10 please state your appearances for the</p> <p>11 record.</p> <p>12 MR. KATZ: Good morning. My name is</p> <p>13 Lisa Rodriguez from the firm of Trujillo</p> <p>14 Rodriguez & Richards for plaintiffs and the</p> <p>15 class.</p> <p>16 MR. KATZ: I'm Daniel Katz of the law</p> <p>17 firm of Katz & Ranzman from Washington, DC,</p> <p>18 and I represent defendant Air Line Pilots</p> <p>19 Association, International.</p> <p>20 THE VIDEOGRAPHER: You may proceed.</p> <p>21 MR. KATZ: We note for the record the</p> <p>22 presence of Allen Press. Thank you.</p> <p>23 EXAMINATION BY</p> <p>24 MS. RODRIGUEZ:</p> <p>25 Q Good morning, Mr. Baehler.</p>	<p>7</p> <p>1 Q Was that the first time you worked</p> <p>2 with the TWA pilots as a negotiator?</p> <p>3 A No, I never worked with them as a</p> <p>4 negotiator doing the negotiations for them. What I</p> <p>5 did starting in 1988 was to conduct seminars on</p> <p>6 negotiating tactics and principles for the MEC and</p> <p>7 for the merger committees over that period of time.</p> <p>8 I also served briefly as a moderator</p> <p>9 in negotiations between the pilots and the company</p> <p>10 over the new contract prior to 2001.</p> <p>11 Q You gave a date of 1988. Was that the</p> <p>12 first time, can you tell me how you came to have a</p> <p>13 relationship with the TWA pilots in 1988?</p> <p>14 A I was sitting on an airplane returning</p> <p>15 to New York and in the seat next to me was a</p> <p>16 gentleman and we began a long flight, I think it was</p> <p>17 cross country. We began talking, and it turned out</p> <p>18 that he was a pilot and was with TWA and this was</p> <p>19 shortly after Carl Icahn had acquired the company.</p> <p>20 He informed me that the pilots were negotiating with</p> <p>21 Icahn over a new contract.</p> <p>22 When he discovered I was a</p> <p>23 negotiations consultant he arranged for me to meet</p> <p>24 when we got back to New York, to meet with the head</p> <p>25 of the MEC and from that they began to retain me to</p>
<p>6</p> <p>1 A Good morning.</p> <p>2 Q My name is Lisa Rodriguez, and as I</p> <p>3 have said I'm from the law firm of Trujillo</p> <p>4 Rodriguez & Richards and with me today here is Allen</p> <p>5 Press from the firm of Green and others in St.</p> <p>6 Louis.</p> <p>7 We represent the plaintiffs in a class</p> <p>8 action that is pending in Federal Court in New</p> <p>9 Jersey, and the class action is titled Bensele versus</p> <p>10 Airline Pilots Association. I am going to be asking</p> <p>11 you a series of questions. The court reporter is</p> <p>12 taking down everything you say and you are under</p> <p>13 oath.</p> <p>14 If you don't understand a question,</p> <p>15 please ask me to repeat it. If at any time you need</p> <p>16 to take a break, just let me know, and we can take a</p> <p>17 break and accommodate you.</p> <p>18 Mr. Baehler, I understand that there</p> <p>19 came a time that you served as a negotiator for TWA</p> <p>20 pilots; is that correct?</p> <p>21 A I wouldn't say a negotiator, I was a</p> <p>22 member of the negotiating committee in which the TWA</p> <p>23 pilots were negotiating with the American Airline</p> <p>24 pilots over the integration of their two pilot</p> <p>25 groups after the acquisition of TWA by American.</p>	<p>8</p> <p>1 conduct these seminars for the MEC and the</p> <p>2 negotiating committee.</p> <p>3 Q Who was it that you met on the</p> <p>4 airplane?</p> <p>5 A Tom Brown.</p> <p>6 Q You referred to a meeting with the</p> <p>7 MEC. What is the MEC?</p> <p>8 A It's a governing body for the TWA</p> <p>9 pilots. It stands for master executive committee I</p> <p>10 think.</p> <p>11 MR. KATZ: Council.</p> <p>12 THE WITNESS: Council. Thank you.</p> <p>13 Q Again in the time frame of 1988 when</p> <p>14 you first met with the TWA MEC who comprised the MEC</p> <p>15 at that point if you recall?</p> <p>16 A I can give you a few names. Tom</p> <p>17 Ashwood. No, he was a gentleman I met with first</p> <p>18 but he was gone by the time I was hired.</p> <p>19 As I recall at the time that I first</p> <p>20 came on board Kent Scott was the head of the MEC and</p> <p>21 Bill Compton was the head of the negotiating</p> <p>22 committee. The other members I'm not sure.</p> <p>23 Q After you met with the TWA MEC what</p> <p>24 did you do next back in the 1988 time frame?</p> <p>25 A They would call me in on a</p>

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<p>9</p> <p>1 semi-regular basis to either conduct a seminar of 2 one or two days for the MEC or to do the same for 3 the negotiating committee. 4 As the individuals would change on the 5 MEC and the negotiating committees they would call 6 me in periodically to bring everybody up to speed. 7 Q When you say conduct seminars, what 8 sort of seminars did you conduct? 9 A Basic negotiating principles and 10 techniques. 11 Q Can you tell me what some of those 12 basic negotiating principles and techniques that you 13 instructed them on were? 14 A Well, the most basic principle is that 15 you need to know what kind of leverage you have in a 16 negotiation, and the leverage is a function of what 17 does the other side want from you. 18 So one of your principal tasks in a 19 negotiation is to identify, I should rephrase that, 20 what the other side needs from you because in a 21 negotiation what you are trying to discern is not 22 what the other side says they want but rather what 23 they need because usually what they want is more 24 than they are willing to accept. 25 What they are willing to accept is</p>	<p>11</p> <p>1 one of your workshops and I would say okay. 2 When I finished I would send them a 3 invoice for my fees and expenses and that would be 4 it. There was never any written contract or 5 retainer. 6 Q You indicated earlier this afternoon 7 that you assisted or were called in by the TWA MEC 8 in connection with negotiations with American 9 Airlines. 10 Can you tell me how that came about? 11 A I got a phone call in April of 2001 12 from Keith O'Leary, who at that time was the vice 13 chairman of the MEC, and he told me that they were 14 involved in some difficult negotiations with the 15 American Airline pilots and they would like me to 16 work with the negotiating committee. 17 So I said I would be glad to and I 18 flew to St. Louis and spent three or four days with 19 the MEC and then simultaneously with the negotiating 20 committee and Mike Day, the chairman, and the other 21 members. 22 Q The TWA negotiating committee? 23 A Correct. 24 Q Were you given any information prior 25 to flying to St. Louis concerning the negotiations?</p>
<p>10</p> <p>1 what they really need. So you are trying to find 2 out what does this other side really need to get out 3 of this negotiation, and the way you do that is by 4 asking questions and, more importantly, listening. 5 In fact, a good negotiator spends more time 6 listening than talking. 7 There's some misconception that 8 negotiations consist of sweeping the other side off 9 their feet with eloquence and charts and all of 10 that. That isn't it. 11 You need to find out what the other 12 person really needs to get out of the negotiations 13 in order to fashion a proposal that makes sense to 14 the other side. 15 Q How often between the time period of 16 1988 through 2001 were you asked to conduct seminars 17 or otherwise consult with the TWA MEC? 18 A My guess it would be on an average of 19 twice a year. Maybe three times each year. Maybe 20 not. More like once or twice a year I would think. 21 Q How would you come to be, were you 22 retained individually for each individual? 23 A Yes, I would get a call from whoever 24 was on the committee or whoever was involved and 25 they would say we need you to come in and do another</p>	<p>12</p> <p>1 A Not that I recall. 2 Q Did you have a prior knowledge of the 3 negotiations going on between TWA and American? 4 A No, I knew that American had acquired 5 TWA from news reports but the situation with the 6 pilots I was ignorant of. 7 Q What happened when you flew to St. 8 Louis in April of 2001? 9 A I sat down with the negotiating 10 committee and I asked them to bring me up to speed, 11 and they told me that the negotiations were very 12 difficult because sometime prior to that April 13 meeting, somewhere in January or February and just 14 prior to the acquisition, they had agreed to give up 15 their contract, to invalidate it, and the reason 16 they did that was because from what they told me 17 that Don Carty, the president of American Airlines 18 had said, that we would call off the merger unless 19 the TWA pilots agreed to give up their scope as they 20 called it. 21 That as they were dealing with this 22 matter, there were advisors from the airline pilots 23 headquarters who were telling them if they didn't 24 agree that the merger would be called off that all 25 the pilots from TWA would be out of a job because</p>

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<p style="text-align: right;">13</p> <p>1 the company would go into a bankruptcy and broken up 2 and its assets sold off.</p> <p>3 Q Who were you meeting with on the 4 negotiating committee at that time in April of 2001?</p> <p>5 A Mike Day, John Swanson, John Hefley, 6 D.J. Glasby and Sean Clark. I think that was it. I 7 am pretty sure that's it.</p> <p>8 Q Did you talk to them about why -- let 9 me back up a minute.</p> <p>10 When you say given up their contract 11 or scope, did you have an understanding that 12 included the seniority of the integration for the 13 TWA pilots?</p> <p>14 A Yes.</p> <p>15 Q Did you talk to them why they thought 16 it was appropriate to give up that contract right?</p> <p>17 A I didn't think they thought it was 18 appropriate. I think they did it because they were 19 under considerable pressure from American Airlines 20 who had said they were going to call off the merger 21 and from the representatives from ALPA, 22 International who were strongly urging them to do 23 this under the threat of everyone losing their jobs.</p> <p>24 With the pressure from American and 25 from ALPA headquarters they didn't feel they could</p>	<p style="text-align: right;">15</p> <p>1 A Well, I never heard of a negotiation 2 where one side gives up all the leverage that they 3 would have afterwards. I told them that.</p> <p>4 I said this doesn't make any sense. I 5 said you now have no leverage in this negotiation. 6 The American pilots can do whatever they want and 7 you have nothing to say about it. You gave up your 8 scope and what did you get in return.</p> <p>9 I was told that Don Carty promised 10 them he would use his best efforts to see to it that 11 the American pilots were fair and equitable in the 12 deal they worked out to integrate the two join 13 seniority systems.</p> <p>14 I said, well, that doesn't sound to me 15 like much of substance. You gave up every bit of 16 leverage you have in this negotiation or would have 17 and now what do you have left. This promise that 18 later turned out not to be of much value. At least 19 not that I saw.</p> <p>20 Q After you met with the negotiating 21 committee and the MEC in April of 2001, what 22 happened next?</p> <p>23 A Well, the first thing that we did was 24 sit down and try to assess what leverage we did have 25 and to see what kind of plan we could produce that</p>
<p style="text-align: right;">14</p> <p>1 refuse and so they gave up their scope.</p> <p>2 Q Did you talk to anybody from ALPA 3 about the pressure that they put on the negotiating 4 committee to give up scope?</p> <p>5 A No.</p> <p>6 Q How did you learn about the pressure 7 put on the negotiating committee?</p> <p>8 A From what the members of the committee 9 told me when they were helping me understand the 10 background.</p> <p>11 I said before if I can be of any help 12 to you I need to know where you stand and what the 13 situation is and how you got here and work out an 14 action plan of where we want to go next.</p> <p>15 Q Did they give you any specifics about 16 what ALPA did in order to facilitate them giving up 17 scope?</p> <p>18 A What they said was there were lawyers 19 from ALPA who met with them and told them that just 20 had to give up their scope under this threat that 21 they were all going to be out of a job. With the 22 statements of Don Carty that American would not 23 effect the merger unless this happened, they 24 eventually gave in and gave up their scope.</p> <p>25 Q Did that strike you as unusual?</p>	<p style="text-align: right;">16</p> <p>1 would have some effect in the negotiations. The 2 conclusion that we came to was that since we didn't 3 have the scope contract on our side, then there 4 needed to be some kind of other pressure put on 5 American and the APA to give us some leverage.</p> <p>6 One of the things that I suggested was 7 that airline pilots headquarters mount a public 8 relations and a lobbying campaign because when you 9 are dealing with a labor dispute that affects the 10 public's right to travel public opinion has a 11 tremendous effect on the outcome of the 12 negotiations.</p> <p>13 I suggested that ALPA be enlisted to 14 develop a public relations campaign and a lobbying 15 campaign which it is designed to do. They are in 16 Washington and it's their function. It's that kind 17 of an organization.</p> <p>18 I also thought at the same time ALPA 19 would be able to provide the threat of litigation 20 and that ALPA should make it clear to APA that if 21 this were not done on some equitable basis that APA 22 would be faced with a lawsuit and have to defend it 23 in court.</p> <p>24 Q Did you convey that information to, 25 did you have any communications with anybody from</p>

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<p style="text-align: right;">17</p> <p>1 ALPA during this time period?</p> <p>2 A The only communication I had was that</p> <p>3 Bob Pastor thought that perhaps ALPA could pay part</p> <p>4 or some of my fees and I'm not sure how it was</p> <p>5 arranged but I know I talked with Clay Werner and</p> <p>6 ALPA eventually agreed to pay for eight days of my</p> <p>7 time. I signed a contract to that effect, but that</p> <p>8 was the only contract that I had with ALPA. I think</p> <p>9 Clay is the only person at ALPA that I had ever</p> <p>10 spoken to.</p> <p>11 Q During the time that you met with MEC</p> <p>12 and the negotiating committee was anybody from ALPA</p> <p>13 at those meetings?</p> <p>14 I am again talking about April 2001.</p> <p>15 A No.</p> <p>16 Q After the April meeting did you again</p> <p>17 meet with representatives from TWA MEC or the</p> <p>18 negotiating committee?</p> <p>19 A We met on a semi-regular basis</p> <p>20 throughout the spring and summer and into the early</p> <p>21 fall of 2001. I can't give you the dates of every</p> <p>22 one of those meetings.</p> <p>23 Q Again after the April meeting, is that</p> <p>24 when you talked about the possibility of a public</p> <p>25 relations campaign?</p>	<p style="text-align: right;">19</p> <p>1 First of all, the problems that were</p> <p>2 caused after the Reno acquisition from the American</p> <p>3 pilots who staged a sick-out of some kind and</p> <p>4 disrupted the schedule at American for some period</p> <p>5 of time, and eventually some court ruled that this</p> <p>6 is was illegal, a court in Texas I think. They</p> <p>7 fined the APA \$50 billion and it was my belief after</p> <p>8 paying \$50 billion fine American Airlines was not</p> <p>9 going to cause any serious disruption because the</p> <p>10 TWA pilots had not given up their scope.</p> <p>11 Second, it just seemed to me to be a</p> <p>12 bluff. I think when someone in the negotiation</p> <p>13 offers what appears to be a bluff you have to call</p> <p>14 them on it. If it turns out -- in other words, they</p> <p>15 should have refused to give up their scope. If it</p> <p>16 turned out later that it was not a bluff and that</p> <p>17 Carty was really going to call off the merger, they</p> <p>18 could go back and say, okay, we thought you were</p> <p>19 bluffing and you are not so let's talk. That's the</p> <p>20 least they should have done was call the bluff.</p> <p>21 Q Now, it's April 2001 and the pilots</p> <p>22 have waived their contract rights, they are still in</p> <p>23 negotiations and what happened next as far as your</p> <p>24 involvement?</p> <p>25 A We began a series of meetings with the</p>
<p style="text-align: right;">18</p> <p>1 A That was my recommendation. Where it</p> <p>2 went after that I don't know. After that I got</p> <p>3 involved in the negotiations themselves.</p> <p>4 Q Going back again to the pilot's</p> <p>5 decision to waive scope what, if anything, would you</p> <p>6 have done differently leading up to the waiver of</p> <p>7 that scope provision?</p> <p>8 MR. KATZ: I'm going to object to that</p> <p>9 question. It is speculative and the form of</p> <p>10 the question is improper.</p> <p>11 Q In the face of the threat from</p> <p>12 American Airlines to walk away from the transaction?</p> <p>13 A I don't believe, I think it was a</p> <p>14 bluff. I said so at this time. I did not believe</p> <p>15 that Don Carty was ready to call off up to the time</p> <p>16 would have been the largest merger I think in</p> <p>17 airline history simply because the TWA pilots</p> <p>18 wouldn't give up their scope. I just didn't believe</p> <p>19 that.</p> <p>20 Carty's position as was explained to</p> <p>21 me was that had there been a pilots in Reno Air when</p> <p>22 they acquired the Reno Air Company and Carty said he</p> <p>23 wasn't going to go through that one again, and if</p> <p>24 the scope wasn't waived then he would call off the</p> <p>25 merger and I didn't believe it.</p>	<p style="text-align: right;">20</p> <p>1 APA that were very difficult, very tedious and time</p> <p>2 consuming and they lasted through the summer and</p> <p>3 into the fall.</p> <p>4 American, I am sorry, the TWA pilots</p> <p>5 hired Professor Tannen who was an economics</p> <p>6 professor and an expert in the airline industry who</p> <p>7 prepared a very detailed proposal which he called</p> <p>8 the rightful place on how the American and TWA pilot</p> <p>9 groups could be integrated in terms of their</p> <p>10 seniority list.</p> <p>11 The basis of the proposal, as I</p> <p>12 recall, American had provided both sides, or at</p> <p>13 least APA who had given it to us was the list of new</p> <p>14 aircraft that American anticipated bringing online</p> <p>15 in the next five years I think. Also there was the</p> <p>16 addition of TWA aircraft and routes, all of which</p> <p>17 meant that American was going to expand considerably</p> <p>18 in terms of aircraft and crews over the next five</p> <p>19 years.</p> <p>20 What Professor Tannen tried to</p> <p>21 demonstrate was a method whereby based on those</p> <p>22 increased crew staffing was that the TWA pilots</p> <p>23 could be integrated into the American pilots</p> <p>24 seniority list without causing any loss of promotion</p> <p>25 expectation.</p>

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<p style="text-align: right;">21</p> <p>1 The problem was that, as I recall it, 2 at one point Mickey Malerski, one of the APA pilots, 3 said no matter how you slice it, talking about 4 Tannen's proposal, I will end up with some 800 TWA 5 pilots ahead of me which meant everybody below 6 Mickey on the list would have some 800 pilots below 7 them. 8 But I said you will still progress to 9 captain, wide body and so on at the same time rate. 10 It doesn't change that I still have 800 guys ahead 11 of me and I think that was the crux of the whole 12 thing. 13 Both sides had a problem in that they, 14 whatever deal was agreed upon was going to have to 15 be approved by all the pilots on either side. I 16 know in our negotiations we spent quite a bit of 17 time trying to make sure that whatever deal we were 18 proposing would be acceptable to the pilots as a 19 group, and I am sure the same thing was happening on 20 the APA side. 21 Professor Tannen's proposal could have 22 served as a justification that would have been used 23 to sell the deal to both sides because it was 24 authoritative, it was impartial, it was analytical 25 and it was quantitative, and it was a deal that</p>	<p style="text-align: right;">23</p> <p>1 A Yes. 2 Q Were there representatives from ALPA 3 there when the proposal was presented? 4 A No. 5 Q Representatives from APA? 6 A Yes, the whole negotiating team was 7 there. 8 Q What was the response to the Tannen 9 proposal? 10 A Well, they asked a lot of questions 11 and they went through almost line-by-line and tried 12 to understand exactly what it was. I'll give them 13 credit for that. They didn't just slough it off. 14 They looked at it very, very carefully. 15 The sense I have is that APA was 16 trying to find a solution that would be acceptable 17 to both sides. They were really to find that. I 18 don't think they came in thinking about trying to 19 just cram down some kind of a proposal that wasn't 20 acceptable. I don't think it was that at all. They 21 were trying to find something acceptable. 22 It came up against that stumbling 23 block that there were going to be TWA pilots put the 24 senior list ahead of those from American even though 25 Professor Tannen showed it would not effect their</p>
<p style="text-align: right;">22</p> <p>1 could be supported in that it wasn't produced by one 2 side or the other. It was impartial and it was 3 analytical and quantitative so that everyone could 4 look at it and say yes that makes sense. 5 The problem is that again going back 6 to Mickey's statement, no matter how you sliced it 7 there was going to be a TWA pilot put ahead of some 8 of the American pilots and they couldn't accept 9 that. 10 Q How was Professor Tannen's report 11 presented to APA? 12 A It was a PowerPoint presentation that 13 he had prepared and that was thrown on the screen 14 and analyzed in great detail at a number of 15 meetings. 16 In fact, afterwards there was a hiatus 17 while American aviators looked at it, analyzed it 18 and produced a very detailed dissection of it and 19 the conclusion was that it wouldn't work and they 20 rejected it. 21 Q Who was present when the Tannen report 22 was presented? 23 A Both negotiating committees. 24 Q By both committees, you mean TWA and 25 the American negotiating committees?</p>	<p style="text-align: right;">24</p> <p>1 promotion expectations. 2 Q When was the Tannen report presented? 3 A Sometime in the summer of 2001. 4 Q What was the next thing that happened 5 during the negotiations? 6 A I'm not sure about the sequence, but 7 there was a facilitator brought in, a fellow named 8 Rolf Valtin, who was paid by American. 9 As I understand it, I think the 10 suggestion was made by TWA that we share the cost, 11 APA pay half and I think ALPA refused. That's my 12 recollection. That's my understanding, ALPA 13 refused, and American paid for the facilitator and 14 they hired him and found him. TWA people had 15 nothing to say about him. 16 His contribution was not to me very 17 effective, and one of the -- there was an 18 interesting slip, I don't know if you would call it 19 a slip, that at one point he referred to the Tannen 20 report, are you going to talk about the Tannen 21 mythology, and we were whoa. Well, then there was 22 some joking was this a Freudian slip and so on. I 23 think he meant to say methodology, I am not sure but 24 it came out mythology, and I think that was his 25 attitude, his real attitude toward the Tannen report</p>

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<p style="text-align: right;">25</p> <p>1 that it wasn't something that was useful as a basis 2 for a deal.</p> <p>3 Q Did he come in after the Tannen report 4 was presented or was he there during the initial 5 presentation?</p> <p>6 A I am not sure.</p> <p>7 Q What was his stated purpose, what was 8 the objective of having him as a facilitator?</p> <p>9 A The negotiations had not been going 10 very well and it was thought that perhaps some 11 outside third party might be able to find a way to 12 bring the two sides together, and in this case that 13 didn't happen.</p> <p>14 Q What time period was he brought in?</p> <p>15 A Sometime in the summer. That's my 16 recollection.</p> <p>17 Q Did he attend negotiating sessions 18 between TWA and American?</p> <p>19 A Yes.</p> <p>20 Q How many sessions approximately did he 21 attend?</p> <p>22 A I don't know.</p> <p>23 I should say this also. Occasionally 24 Mike Day, Ed White and Rolf Valtin would meet 25 separately and maybe one or two others, I don't</p>	<p style="text-align: right;">27</p> <p>1 almost disinterested approach. Not uninterested but 2 disinterested in the sense that he wasn't taking 3 sides.</p> <p>4 As I was listening to him I thought it 5 was very odd that the head of the union, in effect, 6 be so at arm's length when one of the locals of the 7 union was engaged in a very difficult negotiation 8 with another group that had no affiliation with 9 ALPA. APA had deliberately chosen not to become 10 members of ALPA and, in fact, from what pilots told 11 me they often were coldly indifferent to ALPA and 12 its objectives.</p> <p>13 So at the end of the day when Duane 14 and Kevin left we sat around talking and I said what 15 is going on here. Why isn't ALPA threatening a 16 lawsuit or why aren't they bringing some muscle into 17 this negotiation. You guys don't have any clout 18 here and they can provide some and what is going on.</p> <p>19 Somebody, I don't know if it was Mike 20 Day or it might have been somebody else, you don't 21 understand, ALPA is trying to enroll the APA pilots, 22 bring them into ALPA. I said okay, all right. So 23 ALPA had its agenda which apparently was not 24 consistent with the expectations of the TWA pilots.</p> <p>25 Q Do you know who Bob Christie is?</p>
<p style="text-align: right;">26</p> <p>1 know.</p> <p>2 I was never a part of those meetings 3 but I thought it was a good idea. My experience in 4 negotiations more often than not progress is made 5 offline. Proposals can be made that are not in 6 public and don't necessarily commit you to a course 7 of action. So I thought those sessions could have 8 been very productive. I don't know if they were or 9 not. I don't know because I was never a party to 10 any of them.</p> <p>11 Q Again during this time period was 12 ALPA, representatives from ALPA ever present at any 13 of the meetings?</p> <p>14 A Somewhere in that time period of the 15 summer, maybe, I don't think, it was somewhere in 16 the summer, yes, in August, Duane Worth, the head of 17 ALPA and Kevin Dillon, one of his aides, sat in on 18 the session and they were there for pretty much the 19 whole day as I recall.</p> <p>20 Kevin, I don't recall if he said 21 anything, but Duane started out by telling us how 22 important it is that the negotiations be completed 23 successfully and urging us to find a solution and to 24 work together to find a deal that both sides can 25 live with and in general took a very hands-off,</p>	<p style="text-align: right;">28</p> <p>1 A I think he's a lawyer from ALPA, but I 2 am not sure, and I'm not sure I ever met him. I 3 might have but I am not sure.</p> <p>4 Q We are in the summer of 2001, and the 5 facilitator has been brought in and what happened 6 next?</p> <p>7 A It was more of the same. There was a 8 great deal of talk and analysis of the Tannen 9 proposal and then KPMG -- I'm sorry, I forgot that. 10 American, ALPA decided, APA decided to have their 11 own outside analysis so they hired KPMG to do a 12 study and to produce a report that would be a 13 proposal on how to do this and that was introduced 14 at one of the meetings.</p> <p>15 We looked, dissected it as best you 16 could, and afterwards we went back and sat down with 17 it and it didn't sense. Assumptions didn't seem to 18 be valid. The conclusions certainly weren't. The 19 methodology was very suspect. Even the arithmetic 20 had some problems with it.</p> <p>21 We just didn't see it as a positive 22 step, that it just seemed to muddy the waters, and I 23 think I said at this time I think this was just 24 obtained to create a paper trail so that however 25 this turns out the APA guys can say we brought this</p>

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<p style="text-align: right;">29</p> <p>1 outside agency and this was their proposal and we 2 did the best we could. It wasn't anything that was 3 either -- it wasn't useful at least from our point 4 of view.</p> <p>5 Q What happened next as far as your 6 involvement with the TWA MEC negotiations?</p> <p>7 A We kept meeting through August, and 8 then on September, the 10th, we had a meeting in St. 9 Louis and the next morning of course was 10 September 11 and we were at breakfast or in the 11 lobby, rather, and saw the planes hit the World 12 Trade Center and we were just stunned like everyone 13 else.</p> <p>14 When it became known there were they 15 were two American planes, Mike Day called in White 16 and said I don't suppose you want to meet today and 17 he said no, we will meet. Mike said you just lost 18 two planes and two crews. We can't do anything 19 about that. Let's get this done.</p> <p>20 So we sat down with him that day, and 21 I have to tell you what was said and done that day I 22 don't know. It's a blur. Then I don't know, 23 sometime later, I guess maybe before lunch, I don't 24 know, we heard that the towers had come down and 25 then I learned that there were 200 firemen who had</p>	<p style="text-align: right;">31</p> <p>1 pilot group. That it is -- unless the other side 2 perceives you as being totally unified and totally 3 focused on the same objectives you are never going 4 to succeed in these negotiations.</p> <p>5 So that was one of the things that we 6 tried to communicate as much as we could with the 7 pilots to let them know what was happening and how 8 it was happening and where we were going or not 9 going so that there would be as much unity as 10 possible.</p> <p>11 That doesn't mean there was any 12 disagreement or dissent. Of course there was even 13 on the negotiating committee, we didn't agree on 14 everything all the time, but it was essential that 15 the pilots remain solidly behind the negotiating 16 committee and the MEC. Otherwise, there would have 17 been no leverage whatsoever. Anything like that, 18 any division would be exploited by the other side.</p> <p>19 Q Was that need for unity, was that 20 something that APA had conveyed to the pilots prior 21 to your entering the negotiations?</p> <p>22 MR. KATZ: I'm going to object.</p> <p>23 How would the witness know what was 24 being communicated before he was involved in 25 the picture?</p>
<p style="text-align: right;">30</p> <p>1 died.</p> <p>2 I live on Roosevelt Island here in New 3 York and the special op headquarters for the fire 4 department is on Roosevelt Island and I knew the 5 captain and a number of those firemen and I knew 6 they were dead. So when everyone went out to dinner 7 that evening I didn't join them. I couldn't do it. 8 I went back to my room and had a hamburger sent up.</p> <p>9 Q You talked earlier about the creation 10 of a public relations campaign and ALPA's ability to 11 put that together.</p> <p>12 Did that ever happen?</p> <p>13 A Not as far as I know. I know that 14 Senator Bond and Congressman Gephardt were trying to 15 generate some kind of congressional action that 16 would have been a help to the TWA pilots, and I know 17 that an appeal was made to ALPA by the MEC to assist 18 in that and as far as I know they chose not to.</p> <p>19 Q Was it important during this time 20 period, and again I am talking about early 2001 21 through the end of the negotiations, that the pilots 22 remain unified?</p> <p>23 A In my very first session with the 24 pilots I told them it's absolutely essential that 25 any dissent, whatever it is, be contained within the</p>	<p style="text-align: right;">32</p> <p>1 Q Can you answer that?</p> <p>2 A I would have no idea.</p> <p>3 Q When you got involved with the pilots 4 did they understand the need for unity?</p> <p>5 MR. KATZ: Same objection.</p> <p>6 A I think they did and it wasn't just 7 this one time. Everytime that I was in St. Louis 8 with the negotiating committee and we would report 9 to the MEC I would say the same thing. I would say 10 you guys have got to stay together, have got to 11 stick together.</p> <p>12 Q When you had discussions with the 13 pilots when you became involved in April of 2001 14 when they talked about the decision to waive scope, 15 did they talk about some of the tactics that had 16 been employed to get them to waive scope?</p> <p>17 A No, all they said was that the lawyers 18 from ALPA had put enormous pressure on them to give 19 up their scope. How that pressure was evidenced I 20 don't know.</p> <p>21 Q Do you know whether or not they talked 22 to them about the impact of the deal not going 23 through and their fellow pilots?</p> <p>24 A That was the threat. That was the 25 threat from Don Carty, the threat from Don Carty and</p>

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<p style="text-align: right;">33</p> <p>1 the conclusion from the ALPA lawyers that if the 2 pilots don't give up their scope the company would 3 go bankrupt and parts would be sold off and they all 4 would be out of a job.</p> <p>5 Q During your involvement with the 6 negotiating committees, what, if anything, did you 7 see American or Don Carty do which would reflect the 8 best efforts that they agreed to employ in exchange 9 for giving up scope?</p> <p>10 A My understanding is that he wrote a 11 letter to Ed White at APA recommending that a fair 12 and equitable integration be achieved and urging Ed 13 and the APA to find that kind of a solution. I 14 don't know of anything else that was done by Carty.</p> <p>15 Q Do you know whether he ever put any 16 meat on the bones of a fair and equitable 17 integration or he just used those words, he had a 18 proposal?</p> <p>19 A If he did it never appeared in the 20 negotiating room. It wasn't there.</p> <p>21 Q After September 11 what happened next 22 in the negotiations?</p> <p>23 A Well, things just kind of wound 24 downhill after that. I am going to confess after 25 that I really wasn't as focused as I might have</p>	<p style="text-align: right;">35</p> <p>1 didn't provide much help in negotiation. I have a 2 degree in the teaching of social studies from the 3 University of Illinois and a master's in educational 4 psychology from Hobart College.</p> <p>5 I was, I spent four years in the Air 6 Force as an instructor in military law, and then for 7 four or five years I was an insurance investigator 8 and there I learned to negotiate with the personal 9 injury lawyers which was an education in itself.</p> <p>10 Then I took a job as a sales rep with 11 a company called Science Research Associates and 12 three years later my territory was out in Long 13 Island where I was made district manager, and then 14 when SRA was bought by IBM I was sent to IBM to act 15 as liaison between the two companies in a computer 16 instruction program project which was too far ahead 17 of its time, the technology was not adequate at that 18 point.</p> <p>19 The project was shut down, and I took 20 a job then as national sales manager in the 21 education division for Xerox Corporation, and then I 22 was, I took a job as president of Cambosco 23 Scientific Company, a small scientific company in 24 Boston, and when it was merged with General 25 Biological in Chicago I left there and I became</p>
<p style="text-align: right;">34</p> <p>1 been. It took me -- I know we met in St. Louis for 2 the next couple of days and then it took me a while 3 to get back to New York and, in fact, you couldn't 4 get a flight.</p> <p>5 I rented a car, drove to Indianapolis 6 and stayed with my daughter-in-law and then flew 7 back from Indianapolis a few days later. What we 8 got done after that, it just seemed to me that the 9 whole atmosphere had changed, that there was no 10 longer any talk about expanding American flight 11 schedules or crews or aircraft, that it was now talk 12 about contractions and at that point APA was in no 13 mood to put any American pilot ahead of them on the 14 seniority list.</p> <p>15 As it turned out, the final deal that 16 was imposed I think it put some of the more senior 17 pilots of TWA on the list but virtually everybody 18 else was stapled to the bottom of the American 19 seniority list.</p> <p>20 Q I want to just go briefly over some of 21 your background and how you became a negotiating 22 trainer and consultant.</p> <p>23 How did you, what was your educational 24 background that provided that course?</p> <p>25 A I am afraid my educational background</p>	<p style="text-align: right;">36</p> <p>1 manager of training and development for the 2 education division at CBS. Then manager for the 3 publishing group at CBS in training and development.</p> <p>4 In that role -- well, let me go back a 5 bit. When I had been a salesman I had found that 6 there was a deficiency in my selling profile. When 7 I started selling I thought that there was one part 8 to the sales process where you get the other side to 9 want what you have, and I was pretty good at that. 10 What I didn't understand is that there is a second 11 part to the sales process which involves getting 12 them to want to pay what you want them to pay for 13 what they want. That's the negotiation part.</p> <p>14 So I began to look into this 15 negotiations thing and found that there are certain 16 basic principles and techniques that are applicable 17 in almost any negotiating situation, and I started 18 reading books and talking to people and gradually 19 acquiring what I thought was some adequate basis, a 20 base of knowledge in both parts of sales. The 21 selling and the negotiating.</p> <p>22 So then when I was the manager of 23 training and development I wanted to make sure that 24 the other salespeople in the company had both parts. 25 Most of the sales training is done on product</p>

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<p style="text-align: right;">37</p> <p>1 knowledge and selling skills and it's not on how you 2 negotiate. So I organized a seminar on negotiation 3 skills for salespeople and I hired a fellow named 4 Dr. Alan Schoonmaker who does those kinds of 5 seminars and I sat in on it.</p> <p>6 As I was going through the seminar 7 observing it I thought to myself I can do this, and 8 I had been for sometime unhappy with working for 9 somebody else. I thought I would like to work for 10 myself, and I talked to Alan about this and he told 11 me what was involved in becoming a negotiations 12 consultant and how you did it.</p> <p>13 Fortunately, you didn't have to go to 14 law school or be certified by a state agency or pass 15 a bar exam or anything like that. You can just say 16 I am one and there are a lot of guys that have done 17 that and some are good and some are not so good. He 18 encouraged me, and I told my wife this is something 19 I can do well and I want to do it and I want to go 20 or my own. She was a little apprehensive but I did 21 it.</p> <p>22 I culled my customer base from people 23 I knew in the business contacts that I had made over 24 the years and that produced some references. And 25 also I began teaching the negotiations course at the</p>	<p style="text-align: right;">39</p> <p>1 So then the question is what is power. 2 Well, power is a very simple thing. If you have 3 power you can either help someone or you can hurt 4 them. That's all. It's not complicated, it's 5 simple.</p> <p>6 So if you are in a negotiation in this 7 particular case and you have given up your scope you 8 don't have the power to hurt the other side. There 9 is nothing you can use that will impel them to do 10 what you want them to do. All you are left with is 11 the help side. That isn't enough. It isn't enough.</p> <p>12 In a negotiation you have to have 13 both. You have to have the ability to help and to 14 hurt and if you don't have that then the 15 negotiation- you might as well, in fact, if you are 16 in that situation you don't negotiate, you say I'm 17 out of here. I won't do it because if I try to 18 negotiate without any leverage I am going to end up 19 on the short end of the stick and I am going to 20 regret it later.</p> <p>21 So when ALPA insisted that the TWA 22 pilots give up their scope what they were really 23 saying was when you give up your scope and you get 24 into negotiations you are not going to have any 25 leverage and you are going to have whatever APA</p>
<p style="text-align: right;">38</p> <p>1 American Management Association in which people from 2 various companies from all over the country would 3 come to a seminar and I would teach it, and in each 4 seminar at least two people would go back to their 5 company and say this guy is pretty damn good and 6 let's bring him in and that's the principal manner 7 in which I built up my client base.</p> <p>8 Q In this case when you got involved did 9 ALPA follow the principles of negotiations that you 10 believed had universal applicability?</p> <p>11 A Well, certainly not in recommending 12 that the pilots give up their scope because that is 13 your leverage. Just, you can't do that. You just 14 cannot do that.</p> <p>15 If you go into a negotiation and you 16 have given up the only leverage you have what kind 17 of a result are you going to get out of that 18 negotiation? You are going to end up with whatever 19 the other side decides to impose upon you because 20 you don't have any leverage.</p> <p>21 That is the basis for all negotiations 22 is leverage. A negotiation is an exercise in 23 perceived power, not power itself, but perceived 24 power because people's behavior is not determined by 25 what is real but what they perceive it to be.</p>	<p style="text-align: right;">40</p> <p>1 gives you.</p> <p>2 The rationale is but yes you were 3 saving your jobs. Well, I would have tested that. 4 You call their bluff. You say okay, in that case we 5 are out of here. You walk away. I have never seen 6 a negotiation of any consequence in which at one 7 point or another one side or both hasn't walked 8 away. It's a routine part of negotiations.</p> <p>9 How do you know when you are getting 10 the best deal you can from an automobile dealer? 11 Unless you walk and he lets you go and doesn't 12 call you, okay, I guess that was his best offer and 13 you call him back and say, okay, let's talk 14 business.</p> <p>15 But you will never know. If you don't 16 go out the door you will never know. That's what 17 you do in negotiations, you test the other side. In 18 this case there was no testing.</p> <p>19 THE VIDEOGRAPHER: Off the record. 20 The time is two minutes past one o'clock. 21 (Recess taken.) 22 THE VIDEOGRAPHER: We are back on the 23 record at ten minutes past one o'clock. 24 Q Mr. Baehler, right before the break 25 you were talking about leverage and the need to</p>

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<p style="text-align: right;">41</p> <p>1 maintain your leverage in order to have an effective</p> <p>2 negotiating position, and you also talked about in</p> <p>3 the absence of any particular leverage ALPA had</p> <p>4 available to it a public relations campaign.</p> <p>5 What would you have had ALPA do in</p> <p>6 connection with a public relations campaign?</p> <p>7 MR. KATZ: I'm going to object as to</p> <p>8 form.</p> <p>9 Q You can answer.</p> <p>10 What do you think would have been an</p> <p>11 appropriate public relations campaign?</p> <p>12 A I can't describe a campaign as it</p> <p>13 would be mounted because I'm not a public relations</p> <p>14 expert, but that is certainly what ALPA is</p> <p>15 experienced at. I think it was incumbent upon them</p> <p>16 to provide whatever public relations assistance the</p> <p>17 TWA pilots would feel would help them in the</p> <p>18 negotiations.</p> <p>19 They have got the resources and they</p> <p>20 have got the experience and they have got the people</p> <p>21 and they have got the contracts and they know how to</p> <p>22 do those sorts of things.</p> <p>23 Q How could a public relations campaign</p> <p>24 have helped in the negotiations?</p> <p>25 A Because as I said earlier anytime your</p>	<p style="text-align: right;">43</p> <p>1 that suit against APA, that would have provided some</p> <p>2 real pressure.</p> <p>3 Q Do you know whether --</p> <p>4 A I am sorry, and in addition there</p> <p>5 could have been a lobbying campaign on behalf of the</p> <p>6 TWA pilots. Why couldn't ALPA, for instance, have</p> <p>7 called upon other pilots who were in the area or</p> <p>8 passing through Washington or willing to do so to</p> <p>9 join with them in lobbying the members of Congress.</p> <p>10 Airplane pilots are respected and they are heroes to</p> <p>11 a lot of us.</p> <p>12 When we have pilots in United or Delta</p> <p>13 and Continental walking the hall of Congress and</p> <p>14 talking about how unfair things are to the TWA</p> <p>15 pilots that is going to have some effect. I think</p> <p>16 Kit Bond and Dick Gephardt would have been gotten a</p> <p>17 much positive response if that lobbying effort had</p> <p>18 been organized.</p> <p>19 Q Do you feel ALPA did its job in</p> <p>20 connection with this merger?</p> <p>21 MR. KATZ: Objection.</p> <p>22 Q You can answer that.</p> <p>23 A No, as I understand, it is to support</p> <p>24 its members, and TWA was a charter member of ALPA as</p> <p>25 I understand over the years, from what I have been</p>
<p style="text-align: right;">42</p> <p>1 union is involved to negotiate it affects the</p> <p>2 public's right to travel. Public opinion has a</p> <p>3 great deal to say about the outcome. It's just a</p> <p>4 fact of life.</p> <p>5 Now, how effective a public relations</p> <p>6 campaign it would have been I don't know. I don't</p> <p>7 know. It might have been considerably effective or</p> <p>8 there might have been none.</p> <p>9 I think it should have been tried. I</p> <p>10 think it was the responsibility of ALPA to provide</p> <p>11 any of kind of assistance TWA needed or required or</p> <p>12 asked for in these negotiations because they were</p> <p>13 dealing with an entity that was not part of ALPA and</p> <p>14 that, in fact, had been somewhat hostile to ALPA</p> <p>15 over the years. I couldn't understand why APA was</p> <p>16 being treated with in effect with kid gloves.</p> <p>17 Q Was there anything else other than the</p> <p>18 public relations campaign that ALPA could have been</p> <p>19 done to obtain leverage?</p> <p>20 A Absolutely. You can always,</p> <p>21 litigation is not something that anyone wants to</p> <p>22 entertain with any equanimity, and early on ALPA</p> <p>23 should have been made known if an equitable</p> <p>24 agreement was not reached and that ALPA was willing</p> <p>25 to use litigation and use all of its resources in</p>	<p style="text-align: right;">44</p> <p>1 told, hundreds of millions of dollars in TWA dues</p> <p>2 were paid into ALPA. I think it was time for ALPA</p> <p>3 to pay some of that back.</p> <p>4 MS. RODRIGUEZ: I have no further</p> <p>5 questions.</p> <p>6 MR. KATZ: I have some clarifying</p> <p>7 questions for you.</p> <p>8 EXAMINATION</p> <p>9 BY MR. KATZ:</p> <p>10 Q Do you want to take a break?</p> <p>11 A No, like the dentist you want to get</p> <p>12 it over with.</p> <p>13 Q I will make a stab at it. If sometime</p> <p>14 when I am asking these questions you want a break,</p> <p>15 please let me know, and we will take one.</p> <p>16 A Okay.</p> <p>17 Q Ms. Rodriguez asked you about your</p> <p>18 background and I took some notes on what you said</p> <p>19 and I guess I would like to, if I could, pin down</p> <p>20 some of the time frames in what you were describing.</p> <p>21 A Okay.</p> <p>22 Q For instance, when did you get your</p> <p>23 degree from the University of Illinois?</p> <p>24 A 1951.</p> <p>25 Q You said what it was in?</p>

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<p style="text-align: right;">45</p> <p>1 A Teaching in social studies.</p> <p>2 Q What years were you in the Air Force?</p> <p>3 A 1951 to 1955.</p> <p>4 Q During the Korean War?</p> <p>5 A Correct.</p> <p>6 Q Did you serve in Korea?</p> <p>7 A No, no, I never left the Air Force</p> <p>8 base which was a basic training base in upstate New</p> <p>9 York.</p> <p>10 Q Were you a pilot?</p> <p>11 A No, no.</p> <p>12 Q Then what period of time did you work</p> <p>13 as an insurance investigator dealing with these PI</p> <p>14 lawyers?</p> <p>15 A From 1955 to 1961 I think.</p> <p>16 Q After you got out of the Air Force?</p> <p>17 A Yes.</p> <p>18 Q Then you had these various sales</p> <p>19 positions with the company that was absorbed by IBM</p> <p>20 and then with Xerox, and when were you the president</p> <p>21 of Cambosco?</p> <p>22 A 1968 to 1972. Somewhere in there.</p> <p>23 Q The general dates you referred to, I</p> <p>24 wanted to get a feel for it generally.</p> <p>25 A Sure.</p>	<p style="text-align: right;">47</p> <p>1 the chairman or maybe he was the head of the</p> <p>2 negotiating committee, I'm not sure.</p> <p>3 Q Do you know what years that was?</p> <p>4 A No, no.</p> <p>5 Q He was both the negotiating committee</p> <p>6 chairman and later he was the MEC chairman back in</p> <p>7 the late nineties I think.</p> <p>8 Is that around when it was?</p> <p>9 A You got me.</p> <p>10 Q Did you run negotiating seminars for</p> <p>11 the U.S. Air negotiating committee?</p> <p>12 A I think I did one and then I think</p> <p>13 that -- no, I did it twice. I was there twice. I</p> <p>14 was there twice.</p> <p>15 I don't recall any other MEC's I</p> <p>16 worked for, although I did do sales negotiations for</p> <p>17 American Airlines cargo people. For Pam AM. Pan AM</p> <p>18 was, I know I did a couple of sessions at Pam AM,</p> <p>19 but I can't remember.</p> <p>20 Air France with their cargo people.</p> <p>21 That was a nice one. They gave me two free tickets</p> <p>22 on Air France first class. I liked that.</p> <p>23 Q Did you teach these cargo people at</p> <p>24 American, Pan Am and Air France how to negotiate and</p> <p>25 sell?</p>
<p style="text-align: right;">46</p> <p>1 Q At some point you basically went into</p> <p>2 business for yourself?</p> <p>3 A 1981.</p> <p>4 Q That was in 1981?</p> <p>5 A Yes.</p> <p>6 Q The business was related to what you</p> <p>7 had done before in the sense that you had been</p> <p>8 involved in training and development?</p> <p>9 A Yes.</p> <p>10 Q You were doing training for</p> <p>11 negotiations?</p> <p>12 A And sales training.</p> <p>13 Q Sales training?</p> <p>14 A Yes.</p> <p>15 Q Both.</p> <p>16 You did that from 1981, and did you</p> <p>17 retire at some point or are you still doing this?</p> <p>18 A I'm still doing it.</p> <p>19 Q So that's the last 25 years or so.</p> <p>20 During that period of time you talked</p> <p>21 about the work that you did with the TWA MEC.</p> <p>22 Were there any other master executive</p> <p>23 councils of the Airline Pilots Association for which</p> <p>24 you did similar work or any work?</p> <p>25 A Yes, U.S. Air when Pete Gauthier was</p>	<p style="text-align: right;">48</p> <p>1 A Not sell.</p> <p>2 Q Based on cargo?</p> <p>3 A Just the basic principles. It wasn't,</p> <p>4 I am not going to teach you how to negotiate cargo</p> <p>5 rates, but it was basic principals of negotiations</p> <p>6 and now let's see how they apply to your situation.</p> <p>7 Q Their situation was selling cargo</p> <p>8 space on airlines to transport cargo?</p> <p>9 A Yes, and negotiating with</p> <p>10 consolidators and shippers and whoever else uses</p> <p>11 their airline.</p> <p>12 Q Let's go back to the pilots.</p> <p>13 Aside from these two seminars for the</p> <p>14 U.S. Air pilots and the various seminars you</p> <p>15 conducted for the TWA pilots, did you work with any</p> <p>16 other pilot groups in connection with negotiations?</p> <p>17 A No.</p> <p>18 Q Did you work with any other labor</p> <p>19 organizations in connection with their activities?</p> <p>20 A One.</p> <p>21 Q What was that?</p> <p>22 A It wasn't, it wasn't for a union. It</p> <p>23 was for the Puget Sound Power and Light Company. It</p> <p>24 was to go into negotiations with their unionized</p> <p>25 workers. I worked with the negotiating committee</p>

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<p style="text-align: right;">49</p> <p>1 for the company.</p> <p>2 Q That happened to be the company that</p> <p>3 my friend from West Point was the CEO of. Richard</p> <p>4 Sonsteli was his name.</p> <p>5 A No.</p> <p>6 Q He was the CEO until about five years</p> <p>7 ago.</p> <p>8 So how many seminars did you work with</p> <p>9 the management people at Puget Sound Power and</p> <p>10 Light?</p> <p>11 A I don't know. Four or five.</p> <p>12 Q No other unions then?</p> <p>13 A No.</p> <p>14 Q That was labor negotiations between</p> <p>15 the company and the union?</p> <p>16 A Right.</p> <p>17 Q To get a new collective bargaining</p> <p>18 contract?</p> <p>19 A Yes.</p> <p>20 Q In your experiences, other than these</p> <p>21 seminars you did for the cargo people at American,</p> <p>22 Pan Am and Air France, did you have any particular</p> <p>23 work experience in the airline industry?</p> <p>24 A No.</p> <p>25 Q You described your activities with</p>	<p style="text-align: right;">51</p> <p>1 involved in.</p> <p>2 MR. KATZ: Let's mark this as ALPA</p> <p>3 Exhibit -- gosh, I don't remember the</p> <p>4 numbering system before but I think I</p> <p>5 exhausted that.</p> <p>6 Let's just call this ALPA 97. The</p> <p>7 court reporter will put a little stamp on</p> <p>8 that.</p> <p>9 (ALPA Exhibit 97, Jim Baehler's fees,</p> <p>10 marked for identification, as of this date.)</p> <p>11 Q I just sat down with the invoices and</p> <p>12 wrote down the invoice number on the left and the</p> <p>13 date in the second column, the dates and place you</p> <p>14 had done the work, the number of days and the amount</p> <p>15 you billed.</p> <p>16 What you take a look at this and tell</p> <p>17 me if it looks correct?</p> <p>18 A As far as I can tell.</p> <p>19 Q I haven't added this up but let's do</p> <p>20 it now. About 30 days is what I came up with here.</p> <p>21 That's exactly what you just said 30</p> <p>22 days?</p> <p>23 A I guessed right.</p> <p>24 Q So you worked on this project</p> <p>25 approximately 30 days?</p>
<p style="text-align: right;">50</p> <p>1 regard to the TWA pilots, and I guess just to circle</p> <p>2 back on that I think you said prior to the</p> <p>3 negotiations in the year 2001 you met Tom Brown on</p> <p>4 the airplane in 1988 and did one or two seminars a</p> <p>5 year from 1988 to 2001.</p> <p>6 Did I get that right?</p> <p>7 A Yes.</p> <p>8 Q So that would have been 13 years, 13</p> <p>9 to 26 seminars you did?</p> <p>10 A It could be. When you are multiplying</p> <p>11 it by another number get a bigger number guess but</p> <p>12 approximately.</p> <p>13 Q Again what was the total number of</p> <p>14 days you worked with the TWA pilots on this project</p> <p>15 in 2001 starting in April?</p> <p>16 A Oh, God. A guess. 30 to 40.</p> <p>17 Q Did you review any documents before</p> <p>18 you came over here like your invoices to refresh</p> <p>19 your recollection to what the project entailed?</p> <p>20 A Well, the invoices didn't indicate</p> <p>21 what the project was but yes I checked, I reviewed</p> <p>22 the invoices, yes.</p> <p>23 Q I made up a little chart. I looked at</p> <p>24 the invoices too and just made up a chart just to</p> <p>25 get a feel for the amount of activity that you were</p>	<p style="text-align: right;">52</p> <p>1 A Yes. Wait. All the work that I did</p> <p>2 is not necessarily billed. There's a lot of phone</p> <p>3 calls and a lot of back and forth. When I would be</p> <p>4 home there was a lot of communication back and</p> <p>5 forth.</p> <p>6 So the work, there was a lot of input</p> <p>7 that I had or discussions that I had with Mike Day</p> <p>8 and the other members of the committee or Bob Pastor</p> <p>9 and the other members of the MEC that I never billed</p> <p>10 them for.</p> <p>11 Q Let's clarify the record on one point.</p> <p>12 I think in your direct examination,</p> <p>13 you said that you worked with the negotiating</p> <p>14 committee. In fact, Mike Day was the chairman of</p> <p>15 the merger committee, wasn't he?</p> <p>16 A I'm sorry, to me that's the same.</p> <p>17 Q The merger committee was trying to</p> <p>18 negotiate a seniority integration agreement with</p> <p>19 representatives of American pilots?</p> <p>20 A Right, all this work was for the</p> <p>21 merger committee.</p> <p>22 Q I just wanted to clear that up.</p> <p>23 A Yes.</p> <p>24 Q In fact, while you indicated, you said</p> <p>25 you were a member of the committee, you were really</p>

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<p style="text-align: right;">53</p> <p>1 a consultant to that committee?</p> <p>2 A That was a mistake.</p> <p>3 Q The only people that were members were</p> <p>4 the pilots?</p> <p>5 A Of course. That was a mistake.</p> <p>6 Q They were elected by their colleagues</p> <p>7 on the MEC to serve on the merger committee?</p> <p>8 A Correct.</p> <p>9 Q Your role was to advise the merger</p> <p>10 committee and the MEC about the principles of</p> <p>11 negotiations. Is that fair?</p> <p>12 A And to apply those principles to the</p> <p>13 situation that they were in, sure.</p> <p>14 Q Did you sit in on the negotiations</p> <p>15 with the representatives of the American pilots?</p> <p>16 A Yes.</p> <p>17 Q Did you speak at those meetings on</p> <p>18 behalf of the TWA pilots?</p> <p>19 A Very seldom.</p> <p>20 Q Who was the principal spokesperson for</p> <p>21 the TWA pilots?</p> <p>22 A Mike Day.</p> <p>23 Q He was the chairman of the committee</p> <p>24 and he did most of the talking in the merger</p> <p>25 negotiations?</p>	<p style="text-align: right;">55</p> <p>1 that true?</p> <p>2 A Correct.</p> <p>3 Q Because it happened before you were</p> <p>4 there, you didn't hear the threat, for instance,</p> <p>5 from Don Carty that American would back out of the</p> <p>6 acquisition of TWA assets unless the TWA pilots</p> <p>7 complied with this demand, did you?</p> <p>8 A I did not personally hear that threat.</p> <p>9 Q So when you say he was bluffing, it's</p> <p>10 not based on seeing the man's face when he was</p> <p>11 talking to them?</p> <p>12 A Correct.</p> <p>13 Q It's based on your general experience</p> <p>14 in negotiations; is that fair?</p> <p>15 A And applying that experience to the</p> <p>16 particular situation in which this merger of two</p> <p>17 major airlines was about to happen, and I didn't</p> <p>18 believe it would not happen simply because the TWA</p> <p>19 pilots refused to give up their scope.</p> <p>20 Q Had you ever been involved in an</p> <p>21 airline merger before?</p> <p>22 A No.</p> <p>23 Q Did you have any special knowledge</p> <p>24 about airline mergers?</p> <p>25 A No.</p>
<p style="text-align: right;">54</p> <p>1 A But that doesn't mean the others</p> <p>2 didn't speak up a lot also but Mike, he did most of</p> <p>3 the talking.</p> <p>4 Q Then you would work with the TWA</p> <p>5 merged committee before the actual meetings with the</p> <p>6 other side and afterwards to develop strategy and so</p> <p>7 forth?</p> <p>8 A Sure.</p> <p>9 Q You began this process it appears</p> <p>10 around the middle of April 2001; is that correct?</p> <p>11 A Correct.</p> <p>12 Q So if I tell you that the TWA MEC</p> <p>13 adopted a resolution waiving their scope clause</p> <p>14 rights on April 2, 2001, was that a point in time</p> <p>15 prior to the time you became involved in this</p> <p>16 project?</p> <p>17 A Yes.</p> <p>18 Q So when you got involved that had</p> <p>19 already happened?</p> <p>20 A Correct.</p> <p>21 Q It was your judgment that was an</p> <p>22 error?</p> <p>23 A Correct.</p> <p>24 Q But you were basing your judgment on</p> <p>25 what you know about negotiations in general; isn't</p>	<p style="text-align: right;">56</p> <p>1 Q About the airline industry at all?</p> <p>2 A No.</p> <p>3 Q When you said this was one of the</p> <p>4 biggest mergers in history, weren't you in fact</p> <p>5 mistaken? Wasn't U.S. Air's acquisition of Piedmont</p> <p>6 for over a billion dollars bigger in terms of the</p> <p>7 number of pilots in the acquired company and the</p> <p>8 amount of the value of the transaction?</p> <p>9 A I was thinking in terms of passenger</p> <p>10 miles flown.</p> <p>11 Q Didn't the combined U.S. Air, didn't</p> <p>12 Piedmont fly more revenue passenger miles than TWA?</p> <p>13 A It could have.</p> <p>14 Q You don't really know the answer to</p> <p>15 that, do you?</p> <p>16 A No.</p> <p>17 Q Didn't it claim more passengers that</p> <p>18 TWA?</p> <p>19 A It could have.</p> <p>20 Q You don't know the answer one way or</p> <p>21 the other?</p> <p>22 A Not at this point.</p> <p>23 Q In terms of the FedEx's acquisition of</p> <p>24 Flying Tiger, there were no passenger miles</p> <p>25 flown by Flying Tiger, it was bigger in terms of the</p>

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<p>57</p> <p>1 value of the transaction?</p> <p>2 A It could have been. I was thinking of</p> <p>3 the passenger airlines. I said it was one of the</p> <p>4 biggest. I didn't say it was the biggest.</p> <p>5 Q Do you know if it was bigger than</p> <p>6 Delta and Western?</p> <p>7 A I don't know.</p> <p>8 Q Northwestern Republic?</p> <p>9 A No, I don't know.</p> <p>10 Q Texas Air's acquisition of Eastern, do</p> <p>11 you know whether that was larger than this?</p> <p>12 A At this point, no.</p> <p>13 Q So at this point, as we sit here</p> <p>14 today, your comments about TWA's acquisition being</p> <p>15 one of the largest mergers in airline history could</p> <p>16 be subject to revision; is that fair?</p> <p>17 A I still think it was one of the</p> <p>18 biggest mergers in airline history.</p> <p>19 Q Do you know whether the executives</p> <p>20 from TWA also told representatives of TWA MEC that</p> <p>21 American was likely to walk if the TWA MEC didn't</p> <p>22 surrender the scope?</p> <p>23 A I don't know.</p> <p>24 Q You did work with Bill Compton when he</p> <p>25 was chairman of the negotiating committee, didn't</p>	<p>59</p> <p>1 would that make a difference to your opinions?</p> <p>2 A No, no, no. I still maintain the</p> <p>3 position that if you are going to give up every bit</p> <p>4 of leverage that you have in the negotiation and get</p> <p>5 nothing in return, that you ought to at least call</p> <p>6 the others side's bluff if it's a bluff and find</p> <p>7 out.</p> <p>8 If it's a bluff you will find that out</p> <p>9 and if it's not you can then come back and make any</p> <p>10 of concessions that are necessary, but I don't think</p> <p>11 you should give in without testing the bluff,</p> <p>12 regardless of who said it.</p> <p>13 Q Have you ever been in a situation</p> <p>14 where you called somebody's bluff and they didn't</p> <p>15 come back and make a deal when you ran to them and</p> <p>16 asked to have the last deal that was on the table?</p> <p>17 A Have I ever personally been in that</p> <p>18 situation?</p> <p>19 Q Yes.</p> <p>20 A Not that I can recall.</p> <p>21 Q Is it inconceivable to you that if the</p> <p>22 TWA pilots refused to waive their scope clauses as</p> <p>23 they did on April 2nd that Carty would have simply</p> <p>24 walked and the transaction would have fallen apart?</p> <p>25 A If the TWA pilots then had not tried</p>
<p>58</p> <p>1 you?</p> <p>2 A Yes, I did.</p> <p>3 Q You worked with him when he was the</p> <p>4 MEC chairman?</p> <p>5 A Yes.</p> <p>6 Q Did you find him to be a reliable and</p> <p>7 trustworthy person?</p> <p>8 A As far as I know.</p> <p>9 Q Did you have substantial dealings with</p> <p>10 him when he was an ALPA official?</p> <p>11 A Sure, yes.</p> <p>12 Q If Bill Compton said this deal was the</p> <p>13 last hope for keeping TWA alive, would you be</p> <p>14 prepared to accept that as an accurate statement?</p> <p>15 A I don't know at what point he made</p> <p>16 that statement and what were the circumstances at</p> <p>17 the time. I don't know.</p> <p>18 Was that made prior to the pilots</p> <p>19 giving up their scope that he made that statement?</p> <p>20 Q Yes.</p> <p>21 A Was it prior to the pilots giving up</p> <p>22 their scope?</p> <p>23 Q Yes.</p> <p>24 A I don't know then.</p> <p>25 Q If you found out that was the case,</p>	<p>60</p> <p>1 to reopen the negotiations, yes, but if a week or</p> <p>2 two later Don Carty was in the process of</p> <p>3 dissolving, undoing of the merger, and the pilots</p> <p>4 realized that it was not a bluff and that he was</p> <p>5 serious then they could call him, and at that point</p> <p>6 if he's a businessman who is looking at things</p> <p>7 logically and analytically then he would say, all</p> <p>8 right, let's get back and do this.</p> <p>9 I don't think at that point he would</p> <p>10 call off this very advantageous merger to American</p> <p>11 simply because the pilots chose not to accept his</p> <p>12 first edict. That's not good negotiations on his</p> <p>13 part.</p> <p>14 Q You really don't know what was going</p> <p>15 on in Mr. Carty's mind, do you?</p> <p>16 A Of course not. That's how you find</p> <p>17 out what is in the other person's mind, you test it.</p> <p>18 Q You don't really know what the</p> <p>19 discussions were between Carty and representatives</p> <p>20 of the TWA pilots during those negotiations, do you,</p> <p>21 you weren't involved in any of those?</p> <p>22 A No.</p> <p>23 Q That all happened prior to your</p> <p>24 becoming involved?</p> <p>25 A Correct.</p>

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<p style="text-align: right;">61</p> <p>1 Q Are you aware that the bargaining 2 agent for the ground employees and the mechanics at 3 TWA also waived their Allegheny and Mohawk labor 4 protective protections in their collective 5 bargaining contracts? 6 A I think I learned that later. 7 Q The IAM? 8 A Yes, I think I learned that later. 9 Q And the bargaining representative to 10 the flight attendants likewise waived their scope 11 protections; Isn't that true? 12 A That's my understanding. 13 Q They weren't people who talked to the 14 lawyers that had been retained by ALPA to advise the 15 TWA MEC? 16 A I don't know whether they did or not. 17 Q But they made their own judgment about 18 Carty and whether he was bluffing? 19 A I don't know what their judgment was. 20 I know they did waive their scope. What was the 21 basis for that, I don't know. 22 Q You think they made a mistake too? 23 A I don't know. I don't know their 24 situation. I don't know how it came about. 25 All I can talk about is the pilots and</p>	<p style="text-align: right;">63</p> <p>1 done from April 1 to June 30, two invoices, one in 2 May and two in June, and then down below it says 3 paid by ALPA and it says the same three figures in a 4 different order? 5 A Okay. 6 Q Is this what was paid from ALPA 7 National to you for the eight days? 8 A I have no idea. All I know is the 9 eight days, and how much the total of my fees 10 amounted to in eight days I don't know. 11 Q Then the remainder of your fees were 12 paid by the TWA MEC merger fund? 13 A Out of the merger fund, correct. 14 Q That was money that was raised by the 15 assessments of the TWA pilots to pay for merger 16 related expenses? 17 A That is my understanding. 18 Q Did it make any difference to you 19 whether you were paid from one source or the other? 20 A No. 21 Q I don't know if I need to make this an 22 exhibit or not. I'm holding up a two page document 23 dated July 2001 with what looks like your photograph 24 and it has got a headline that says "An Interview 25 with Negotiating Consultant Jim Baehler".</p>
<p style="text-align: right;">62</p> <p>1 what I learned in working with them. 2 Q What was the source of your 3 information, the TWA MEC? 4 A The members of the merger committee. 5 Q You didn't talk to Clay Warner on this 6 subject, did you? 7 A No. 8 Q You talked about your bills and the 9 method of getting paid? 10 A Correct. 11 Q Is that approximately the right amount 12 that you received in fees? 13 A As far as I know. 14 Q I took out the expenses because they 15 were just passed through, the expenses. 16 A Yes, yes. 17 Q I have this note and let's mark this 18 is as Exhibit 98. 19 (ALPA Exhibit 98, handwritten note, 20 marked for identification, as of this date.) 21 Q Do you recognize this handwriting? 22 A No, it's not mine. 23 Q It's not yours? 24 A No. 25 Q The note at the top talks about work</p>	<p style="text-align: right;">64</p> <p>1 Do you remember seeing this? 2 A Yes, I do. 3 Q Do you remember writing it? 4 A Yes, I do. 5 Q There are some people that did some 6 editing on it, but basically it's Q and A by 7 yourself, isn't it? 8 A Yes, it was. 9 Q This was a device to educate the TWA 10 pilots about what was going in the negotiations, 11 wasn't it? 12 A It was two purposes. One, to let them 13 know what was happening in the negotiation and two, 14 to assist in the process of maintaining unity. 15 Q So this was a way to tell them about 16 what was going on and to let them know about your 17 work on behalf of the TWA pilots? 18 A There was another. Third. To let 19 them know there was professional help for the 20 committee and the pilots were not going it alone. 21 Q You weren't the only professional 22 involved on behalf of the TWA merger committee, were 23 you? 24 A No. 25 Q Who were some of others?</p>

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<p style="text-align: right;">65</p> <p>1 A Professor Tannen and Roland Wilder.</p> <p>2 Q How about David Holtzman?</p> <p>3 A He was never, I used to see him around</p> <p>4 the MEC headquarters in St. Louis, but he was never</p> <p>5 involved in any of the face-to-face negotiations</p> <p>6 with APA.</p> <p>7 Q Any other professionals that you can</p> <p>8 think of right now?</p> <p>9 A Not offhand. There might have been,</p> <p>10 but I don't remember them now.</p> <p>11 Q Was this part of a, called The Beacon</p> <p>12 newsletter TWA MEC to TWA pilots?</p> <p>13 A Inhouse newsletter but in magazine</p> <p>14 form though. Pamphlet.</p> <p>15 Q Let me just ask you about one or two</p> <p>16 of the entries in here and if we need to I'll make</p> <p>17 it an exhibit. I don't have copies of it now and</p> <p>18 it's kind of a funny size.</p> <p>19 You gave some background for your own</p> <p>20 work, right?</p> <p>21 A Yes.</p> <p>22 Q You asked the question are there other</p> <p>23 problems facing the merger committee, and let me</p> <p>24 just read part of the answer and tell me if I have</p> <p>25 read it correctly.</p>	<p style="text-align: right;">67</p> <p>1 giving up something that somebody else might object</p> <p>2 to.</p> <p>3 So open negotiations are usually a</p> <p>4 series of innocuous proposals, and there is very</p> <p>5 little actual negotiations that go on. Real work on</p> <p>6 the negotiation is conducted either in private</p> <p>7 sessions in which there was not other people who can</p> <p>8 comment or criticize what is being proposed or</p> <p>9 suggested or in offline negotiations in which</p> <p>10 private trial balloons can be floated to see whether</p> <p>11 or not they have any validity.</p> <p>12 Q You did say that there were some</p> <p>13 private meetings that you mentioned on direct</p> <p>14 examination between Mike Day, Ed White and Rolf</p> <p>15 Valtin?</p> <p>16 A Correct.</p> <p>17 Q Other than those, was this problem</p> <p>18 about the open negotiations ever satisfactorily</p> <p>19 resolved to your knowledge?</p> <p>20 A Not really. Not really because both</p> <p>21 sides felt it incumbent upon them to inform their</p> <p>22 pilot constituents on a regular basis what was</p> <p>23 happening.</p> <p>24 It wasn't as bad as if there were</p> <p>25 pilots sitting in and going back to spread stories</p>
<p style="text-align: right;">66</p> <p>1 A I am sure you will read it correctly.</p> <p>2 Q "I think the other major stumbling</p> <p>3 block to progress in the negotiations is the fact</p> <p>4 that they are being conducted in the open," and you</p> <p>5 go on the explain.</p> <p>6 Do you recall explaining about that?</p> <p>7 A Sure.</p> <p>8 Q I think that Ms. Rodriguez asked about</p> <p>9 that subject and you talked a little about it on</p> <p>10 direct examination, and could you expand a little</p> <p>11 more?</p> <p>12 MS. RODRIGUEZ: I'm going to ask it be</p> <p>13 marked as an exhibit.</p> <p>14 MR. KATZ: That's fine. I don't have</p> <p>15 copies available now. We can mark it as</p> <p>16 Exhibit 99.</p> <p>17 I wasn't asking the witness to read me</p> <p>18 anything. I was asking for his comments.</p> <p>19 (ALPA Exhibit 99, newsletter, marked</p> <p>20 for identification, as of this date.)</p> <p>21 A The issue of open negotiations, the</p> <p>22 problem with open negotiations is that when others</p> <p>23 are observing, whether it is people who are one side</p> <p>24 on the other, there's a tendency to avoid making</p> <p>25 concessions because you don't want to be caught</p>	<p style="text-align: right;">68</p> <p>1 but it would have been better if there had been a</p> <p>2 blackout of news or stories.</p> <p>3 You are familiar -- this is a routine</p> <p>4 in union negotiations. When it gets serious what do</p> <p>5 they do? They cause a blackout, and they can get</p> <p>6 down to some serious work. They never got to that</p> <p>7 point in this. It probably wouldn't have been</p> <p>8 useful because people would have been wondering what</p> <p>9 was going on.</p> <p>10 We did the best with the situation to</p> <p>11 keep the pilots somewhat informed about what was</p> <p>12 happening.</p> <p>13 Q Did there come a time when you advised</p> <p>14 the TWA merger committee to have, I don't know how</p> <p>15 to put it, more closed negotiations and less open</p> <p>16 negotiations?</p> <p>17 A There might have been.</p> <p>18 Q Do you recall telling that?</p> <p>19 A I don't but I might have.</p> <p>20 Q There is a question and answer after</p> <p>21 the one we were just talking about where you said</p> <p>22 how can these problems be overcome and the answer</p> <p>23 is, "I am not sure that they can be," and then you</p> <p>24 went on to give a more detailed response.</p> <p>25 So my next question is in view of that</p>

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<p style="text-align: right;">69</p> <p>1 question and answer, Mr. Baehler, isn't it true that</p> <p>2 when you got involved there was by no means any</p> <p>3 assurance that the negotiations were going to</p> <p>4 successfully result in an agreement?</p> <p>5 A There was no assurance of that,</p> <p>6 correct.</p> <p>7 Q That was ultimately how it turned out?</p> <p>8 A That's correct.</p> <p>9 MR. KATZ: Let's mark this Exhibit 100.</p> <p>10 (ALPA Exhibit 100, letter dated</p> <p>11 10/26/01, marked for identification, as of</p> <p>12 this date.)</p> <p>13 Q Take a look at ALPA Exhibit number</p> <p>14 100, Mr. Baehler, and tell me if you could please</p> <p>15 whether you recognize this document?</p> <p>16 A It's a letter that I wrote, sure, to</p> <p>17 Keith O'Leary.</p> <p>18 Q On/or about October 26, 2001?</p> <p>19 A That's the date, yes.</p> <p>20 Q That's your signature Jim down at the</p> <p>21 bottom?</p> <p>22 A Yes.</p> <p>23 Q Keith O'Leary, was he the secretary</p> <p>24 treasurer?</p> <p>25 A I think he was at that point.</p>	<p style="text-align: right;">71</p> <p>1 A After September 11 there wasn't much</p> <p>2 that APA could do. After September 11 there wasn't</p> <p>3 talk about expanding the airline and more routes and</p> <p>4 crews. Now it's contraction.</p> <p>5 In that situation APA's obvious</p> <p>6 primary responsibility was to maintain the jobs of</p> <p>7 their members, and if they had to staple the TWA</p> <p>8 pilots at the bottom of their seniority list to do</p> <p>9 that then they were prepared to do it.</p> <p>10 Q That's what you would have expected</p> <p>11 them to do at that point in time, isn't it?</p> <p>12 A I don't know what I expected them to</p> <p>13 do but it certainly is something that is not</p> <p>14 surprising. That's their job to protect the jobs of</p> <p>15 their people.</p> <p>16 Q So you were not surprised there wasn't</p> <p>17 that much progress made after September 11?</p> <p>18 A No, no.</p> <p>19 Q You didn't fault APA for it, that was</p> <p>20 their job at that point in time; is that right?</p> <p>21 A What I objected to, which is in the</p> <p>22 third paragraph, is that we were led to believe that</p> <p>23 APA was ready to put an offer on the table that we</p> <p>24 would like.</p> <p>25 I'll keep reading. "How that came</p>
<p style="text-align: right;">70</p> <p>1 Q In the second paragraph you say "After</p> <p>2 September 11 there really wasn't much that APA could</p> <p>3 do."</p> <p>4 Then at the end of that paragraph --</p> <p>5 A I am sorry, that's a misprint. Wait a</p> <p>6 minute.</p> <p>7 Q Look at the whole paragraph before you</p> <p>8 answer.</p> <p>9 You also say "It was impossible for</p> <p>10 APA or its board to agree to any substantive</p> <p>11 concessions beyond their last offer in Chicago."</p> <p>12 That was your opinion on October 27,</p> <p>13 2001, wasn't it?</p> <p>14 A Correct.</p> <p>15 Q Is it still your opinion now?</p> <p>16 MS. RODRIGUEZ: Take a minute to read</p> <p>17 the letter.</p> <p>18 A I think that is what I have been</p> <p>19 saying pretty much during this deposition.</p> <p>20 Q That's what I thought you would be</p> <p>21 saying.</p> <p>22 A Yes.</p> <p>23 Q Why is it that you felt that way?</p> <p>24 Would you care to add any comments to what you have</p> <p>25 got here and what you said before?</p>	<p style="text-align: right;">72</p> <p>1 about is a mystery to me and I have no idea where</p> <p>2 the blame lies but it was apparent by Monday that</p> <p>3 the APA had nothing to offer and we had been misled,</p> <p>4 and I am also upset that Ed White and John Darrah</p> <p>5 didn't tell us up-front on Saturday they were not</p> <p>6 authorized to alter their Chicago offer by one</p> <p>7 iota." Instead they spent Saturday and Sunday</p> <p>8 asking for an offer from us and then analyzing it in</p> <p>9 detail. Only until Monday did they reveal the</p> <p>10 Chicago offer was not going to be altered, which</p> <p>11 left MEC very little time to give it consideration</p> <p>12 before APA's 2:00 p.m. deadline."</p> <p>13 Q You said in the letter that how that</p> <p>14 came about was a mystery?</p> <p>15 A How we were led to believe that they</p> <p>16 APA was ready to put an offer on the table we would</p> <p>17 like is a mystery, that's correct. We were given</p> <p>18 the impression that APA was going to put an offer or</p> <p>19 on the table that, quote, we would like.</p> <p>20 Q You don't know how that came about?</p> <p>21 A Correct.</p> <p>22 Q In the last full paragraph before the</p> <p>23 in any event piece you mentioned that "Mike Day and</p> <p>24 his committee did the most that any negotiating team</p> <p>25 can accomplish, which to drive the other side to</p>

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<p style="text-align: right;">73</p> <p>1 place their bottom line on the table." 2 Do you still feel that way? 3 A Yes. 4 Q The final conclusion was that it was 5 not the fault of APA that it came in so late for 6 proper analysis? 7 A No, it's says "The fault that it came 8 too late for proper analysis is the fault of APA." 9 Q "The fact that it came too late for 10 analysis is the fault of the APA and reveals their 11 ignorance for collective bargaining techniques." 12 A Yes. 13 Q That's refers to the American pilots' 14 union? 15 A Correct. 16 Q Did the events discussed in this 17 letter to your view have something to do with the 18 negotiations not progressing at that point? 19 A I don't understand the question. 20 Q You mentioned the fact that this 21 proposal came too late for the MEC to give it 22 adequate consideration? 23 A Correct. 24 Q Did that have something to do with the 25 fact that there was no progress made on the</p>	<p style="text-align: right;">75</p> <p>1 was paying me, that's all. 2 Q It wasn't about the substance of the 3 negotiations or the PR campaign or anything? 4 A No. 5 Q I think it's clear from what you 6 testified about earlier today that you did not make 7 recommendations to anyone at ALPA national in 8 Washington, D.C. or Herndon with regard to a PR 9 campaign or a lobbying campaign or any of those 10 subjects, did you? 11 A That would not have been my role or my 12 responsibility or my function. 13 In fact, part of the recommendation it 14 would have to come from somebody on the MEC. 15 Q You nevertheless felt comfortable 16 talking about what you felt ALPA's responsibility 17 was? 18 I have it in my notes that -- 19 A Let me put it another way. 20 MS. RODRIGUEZ: Wait until he asks a 21 question, Mr. Baehler. He's reviewing his 22 notes. 23 A All right. 24 Q I have in my notes you said it was the 25 responsibility of ALPA to provide whatever</p>
<p style="text-align: right;">74</p> <p>1 negotiations at that point in time? 2 A No, because there was no further 3 negotiations. It's just that the MEC didn't have 4 time to adequately consider and analyze the APA 5 proposal. Instead of giving it to us on Friday or 6 Saturday, they kept us believing over the weekend 7 that they were going to get a different offer that 8 was going to be better, and it turned out on Monday 9 after sitting around Saturday and Sunday trying to 10 analyze what this new offer was going to be, it 11 turned out to be the same offer that was offered on 12 Friday, and told us that we had a 2:00 p.m. deadline 13 to say yes or no to it. Why couldn't they have told 14 that to us on Friday. 15 Q You don't blame that on ALPA, do you? 16 A No. Everything in the world is not 17 ALPA's fault. 18 Q That wasn't true for a while. 19 It doesn't sound like you really had 20 any conversations with people working at the ALPA 21 national headquarters? 22 A Correct. 23 Q You had this one conversation with 24 Clay Warner that really wasn't substantive, was it? 25 A Correct, it was about my invoices, who</p>	<p style="text-align: right;">76</p> <p>1 assistance that TWA pilots wanted in these 2 negotiations or something like that. 3 On what do you form the basis for 4 determining what ALPA's responsibility was in these 5 negotiations, Mr. Baehler? 6 A It's my understanding that ALPA is the 7 umbrella organization of which the TWA pilots MEC is 8 a member. TWA pilots pay dues to ALPA. 9 Is that correct? 10 Q You don't have any real experience in 11 how labor unions function, do you? Have you ever 12 been a union member? 13 A No. 14 Q What is the source of your 15 understanding of how unions function then? 16 A Just from what I read in the 17 newspapers, books and magazines. 18 Q Have you ever read the constitution 19 and bylaws of the American Airlines organization? 20 A No. 21 Q You are not really familiar with the 22 responsibility of how the different parts of that 23 organization are determined? 24 A Correct. I am assuming, and if I am 25 incorrect you can tell me, I am assuming that the</p>

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<p style="text-align: right;">77</p> <p>1 international headquarters has some responsibility</p> <p>2 to protect the interests of the locals from whom</p> <p>3 they received dues.</p> <p>4 Q Do you know whether there are locals</p> <p>5 in the Airline Pilots Organization?</p> <p>6 A I'm using local in the sense of a</p> <p>7 traditional union.</p> <p>8 Q In fact, ALPA is not a traditional</p> <p>9 union and they don't have locals; isn't that true?</p> <p>10 A Whatever they are called. The MEC is</p> <p>11 a unit of ALPA, is that not correct, and this unit</p> <p>12 pays dues to ALPA.</p> <p>13 Q Are you a lawyer?</p> <p>14 A No.</p> <p>15 Q Have you done any legal research or</p> <p>16 other research about the responsibilities of labor</p> <p>17 organizations under the Federal labor laws?</p> <p>18 A No.</p> <p>19 Q So when you talk about the</p> <p>20 responsibility of ALPA, you are making that</p> <p>21 statement not as a legal conclusion but as some kind</p> <p>22 of a moral judgment about the way unions ought to</p> <p>23 operate?</p> <p>24 A No, no.</p> <p>25 Q In what sense then?</p>	<p style="text-align: right;">79</p> <p>1 out of tape, and while we may finish within</p> <p>2 the few minutes remaining I think it would</p> <p>3 probably be better to take a short break and</p> <p>4 let him change the tape.</p> <p>5 THE VIDEOGRAPHER: Off the record.</p> <p>6 The time is two o'clock and this is the end</p> <p>7 of tape number one.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: This will be the</p> <p>10 start of tape number two and we are back on</p> <p>11 the record at 11 minutes past two o'clock.</p> <p>12 Q Mr. Baehler, I do have a few more</p> <p>13 questions. You mentioned in your testimony earlier</p> <p>14 this afternoon that TWA pilots have no say in the</p> <p>15 choice of a facilitator and that ALPA refused to pay</p> <p>16 for the costs of the facilitator.</p> <p>17 Is it possible that you are wrong</p> <p>18 about those things?</p> <p>19 A It's possible. That's my</p> <p>20 understanding.</p> <p>21 Q What is your understanding based on?</p> <p>22 A Information that was given to me by</p> <p>23 members of the merger committee.</p> <p>24 Q Did you see any document that</p> <p>25 confirmed either of those points?</p>
<p style="text-align: right;">78</p> <p>1 A I assume when you pay dues to some</p> <p>2 organization that has some supervisory</p> <p>3 responsibility for you, that they have some</p> <p>4 additional responsibility to make sure that your</p> <p>5 interests are being protected.</p> <p>6 Q Do you think they have to do</p> <p>7 everything you ask them to?</p> <p>8 A Of course not.</p> <p>9 Q Do you think they have to make some</p> <p>10 judgments about what is in the best interest of the</p> <p>11 group?</p> <p>12 A I would assume so.</p> <p>13 Q Do you think the bargaining</p> <p>14 representative has to make a judgment about what is</p> <p>15 achievable in the circumstances?</p> <p>16 A Sure, of course.</p> <p>17 Q Do you know what steps ALPA took to</p> <p>18 evaluate that?</p> <p>19 A No.</p> <p>20 Q So your comments about ALPA's</p> <p>21 responsibility and what it was incumbent upon ALPA</p> <p>22 to do, those are not legal conclusions, are they?</p> <p>23 A Correct.</p> <p>24 MR. KATZ: The videographer has held</p> <p>25 up a note indicating that he's about to run</p>	<p style="text-align: right;">80</p> <p>1 A No.</p> <p>2 Q Which member of the merger committee</p> <p>3 told you that?</p> <p>4 A I don't remember.</p> <p>5 Q So you are not really sure about those</p> <p>6 things, are you?</p> <p>7 You may answer the question.</p> <p>8 A I am sure that I was told that ALPA</p> <p>9 chose not to participate in the fee for the</p> <p>10 facilitator and that APA therefore chose the</p> <p>11 facilitator and paid the facilitator entirely out of</p> <p>12 American money.</p> <p>13 Q Was it American or APA?</p> <p>14 A APA.</p> <p>15 Q You are saying it was APA who paid for</p> <p>16 the facilitator?</p> <p>17 A I am sorry, I don't know whether it</p> <p>18 was American Airlines or APA. I don't know.</p> <p>19 Q Do you know who it was that selected</p> <p>20 the facilitator when that was done?</p> <p>21 A It's my understanding it was either</p> <p>22 APA or American.</p> <p>23 Q But you are not really sure how it was</p> <p>24 done?</p> <p>25 A How it was done, no.</p>

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<p style="text-align: right;">81</p> <p>1 Q Do you have any reason to question the 2 credentials involved as a mediator?</p> <p>3 A No.</p> <p>4 Q You have mediated a number of 5 contracts in the airlines over a number of years?</p> <p>6 A I suppose I was told that at the time 7 but at this time the information has not stuck with 8 me.</p> <p>9 Q The period of time when they failed to 10 achieve an agreement included the period of time 11 after September 11 when it got much more difficult, 12 if not impossible, to do that?</p> <p>13 A Correct.</p> <p>14 Q I think the mediation went on through 15 October, didn't it, do you recall?</p> <p>16 A I don't recall.</p> <p>17 Q You list four days of consulting on 18 Exhibit 97, October 19 through 22, in Washington, 19 D.C.</p> <p>20 Does that tell us whether you were 21 still involved in the facilitated discussions at 22 that point in time?</p> <p>23 A I don't remember if Mr. Valtin was 24 there then. You asked if he was there and I don't 25 know.</p>	<p style="text-align: right;">83</p> <p>1 Q He's a lawyer with the law firm of 2 Cohen Weiss & Simon in New York City who specializes 3 in bankruptcy law.</p> <p>4 Does that refresh your recollection 5 about whether you met him or not?</p> <p>6 A No.</p> <p>7 Q Have you ever met Randy Babbitt? He 8 was another advisor who was there on the 2nd of 9 April 2001.</p> <p>10 A No.</p> <p>11 Q Do you know who he is?</p> <p>12 A He was head of ALPA when I first 13 started working with TWA pilots in 1988. Beyond 14 that, I don't know anything else about him.</p> <p>15 Q But he was the president of ALPA?</p> <p>16 A In 1988. That I know.</p> <p>17 Q Ms. Rodriguez asked you about Bob 18 Christie. Let's just stick with those two people, 19 Mr. Seltzer and Captain Babbitt.</p> <p>20 Do you think they were unaware of the 21 possibility of walking out on American Airlines as a 22 negotiating tactic?</p> <p>23 A I would have no idea at all about 24 whether they knew anything. I don't know. I wasn't 25 there and I never have spoken with them about it as</p>
<p style="text-align: right;">82</p> <p>1 Q I was basically asking whether the 2 facilitated discussions were continuing in 3 mid-October.</p> <p>4 A There were discussions in mid-October, 5 and whether they were being facilitated by Mr. 6 Valtin I don't remember.</p> <p>7 Q Because you weren't there, you don't 8 have any first-hand knowledge of what was said on 9 the 2nd of April by advisors to the TWA MEC; is that 10 true?</p> <p>11 A True.</p> <p>12 THE VIDEOGRAPHER: I am receiving 13 BlackBerry interference.</p> <p>14 MS. RODRIGUEZ: It is off.</p> <p>15 Q Mr. Baehler, with regard to the people 16 who were there giving advice to the TWA MEC, have 17 you ever met Rich Seltzer?</p> <p>18 MS. RODRIGUEZ: I'm sorry, can you 19 repeat the question?</p> <p>20 Q Richard Seltzer was one of the people 21 who was advising the TWA MEC on April 2nd, 2001. 22 Have you ever met him?</p> <p>23 A I don't recall meeting him. I might 24 have and, if so, I don't remember. I don't recall 25 meeting him.</p>	<p style="text-align: right;">84</p> <p>1 far as I know. How would I know what is in their 2 minds?</p> <p>3 Q Do you know whether they are 4 experienced negotiators?</p> <p>5 A I have no idea.</p> <p>6 Q So when you say that you think that 7 these advisors made a mistake, you really don't know 8 what kind of considerations they were weighing in 9 giving advice to the TWA MEC, do you?</p> <p>10 A You are asking if I know what was in 11 their minds, what considerations they were weighing 12 in their minds, no, I don't know that.</p> <p>13 Q If they are aware of some facts that 14 you are not aware of it's possible that you are the 15 one that made a mistake and not them, isn't it?</p> <p>16 A Well, I don't know what possible 17 information someone would have that would justify 18 going into a negotiation and saying to one party I 19 want you to give up every single leverage you will 20 have. I don't know what kind of information would 21 produce that conclusion.</p> <p>22 Q Suppose if you didn't give it up the 23 Bankruptcy Court was going to take it away from you 24 anyhow. Would that be a factor one would consider?</p> <p>25 A Well, of course, but is that an</p>

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<p style="text-align: right;">85</p> <p>1 absolute certainty that the Bankruptcy Court said to</p> <p>2 the pilots that if you don't give up your scope we</p> <p>3 are going to take it away from you?</p> <p>4 Q Suppose you were advising your client</p> <p>5 as a negotiating consultant and while nothing in</p> <p>6 life is an absolute certainty you had as close to a</p> <p>7 certainty as you could visualize in your mind about</p> <p>8 what was going to happen if you didn't agree to it.</p> <p>9 Wouldn't that be something that would</p> <p>10 be a factor that you would weigh heavily in giving</p> <p>11 advice to that client?</p> <p>12 A Of course you weigh it heavily. Of</p> <p>13 course.</p> <p>14 Q In addition, by agreeing to waive your</p> <p>15 scope provisions you got something in return and you</p> <p>16 were going to lose it for nothing anyhow, wouldn't</p> <p>17 that make the analysis a little simpler?</p> <p>18 A I don't know if would make it simpler.</p> <p>19 It would certainly make the decision more difficult.</p> <p>20 Anytime you call someone's bluff you are taking a</p> <p>21 chance. Negotiations is not a mathematical exercise</p> <p>22 in which you say, okay, this is two and two equals</p> <p>23 four. It doesn't work like that.</p> <p>24 In negotiations you are trying to</p> <p>25 determine what is really behind the other person's</p>	<p style="text-align: right;">87</p> <p>1 throwing myself on your mercy to give me whatever is</p> <p>2 in your good heart to give me.</p> <p>3 Q That's the situation you found the TWA</p> <p>4 MEC was in when you started advising them, isn't it?</p> <p>5 A Correct.</p> <p>6 Q Getting back to this question of</p> <p>7 Bankruptcy Court and the advice to waive the scope</p> <p>8 because TWA pilots were getting something out of</p> <p>9 that and the Bankruptcy Court was going to take it</p> <p>10 away and not give anything in return?</p> <p>11 MS. RODRIGUEZ: I object to the</p> <p>12 question.</p> <p>13 MR. KATZ: I haven't posed the</p> <p>14 question yet but let me phrase the question</p> <p>15 this way.</p> <p>16 Q Wasn't there also a risk in the</p> <p>17 negotiations in early April before you got involved</p> <p>18 that Carty would say, instead of saying I'm going to</p> <p>19 walk away from the transaction, he would simply say</p> <p>20 I'm tired of negotiating with you, you are a pain</p> <p>21 and I'm not going to negotiate anymore and I'm going</p> <p>22 to let the Bankruptcy Court decide what to do.</p> <p>23 Wasn't that also a risk?</p> <p>24 A Well, that would certainly be an</p> <p>25 alternative that he would consider.</p>
<p style="text-align: right;">86</p> <p>1 proposal, and you are also trying to determine when</p> <p>2 they tell you that this is their bottom line,</p> <p>3 whether or not that is really their bottom line.</p> <p>4 In this case Carty was saying this is</p> <p>5 my bottom line. I'm not going to go ahead with this</p> <p>6 merger unless the TWA pilots give up their scope. I</p> <p>7 am going to test that. I can't imagine any</p> <p>8 situation in a negotiation where you don't test that</p> <p>9 statement.</p> <p>10 Q What was the risk involved in testing</p> <p>11 it?</p> <p>12 A The risk was that Dr. Carty was not</p> <p>13 bluffing and would then say, okay, the merger is</p> <p>14 off, in which case you call him back and say, wait,</p> <p>15 wait. We are negotiating here. What is the big</p> <p>16 rush. If you are going to do this then let's stop</p> <p>17 and think about it. Let's talk some more. Let's</p> <p>18 talk some more, but you don't just walk away and</p> <p>19 stay away. That's not a walk-away, that's a</p> <p>20 goodbye. You walk away to test the other person's</p> <p>21 bottom line, that's all.</p> <p>22 It is like buying a, I don't want to</p> <p>23 make analogies here, but you just don't do that in</p> <p>24 any negotiation because, in effect, you then say,</p> <p>25 okay, I am giving up all my leverage so I am now</p>	<p style="text-align: right;">88</p> <p>1 Q Wouldn't you view that from the</p> <p>2 standpoint of the representatives of the pilots as a</p> <p>3 risk?</p> <p>4 A No, I don't think so.</p> <p>5 Q Why not?</p> <p>6 A Because I have to ask myself why would</p> <p>7 Don Carty want to acquire TWA, there's only one</p> <p>8 reason, because he thinks it will enhance the growth</p> <p>9 and the profitability of the expansion of American</p> <p>10 Airlines. It's an advantageous move for American</p> <p>11 Airlines.</p> <p>12 For a CEO of a company to say to</p> <p>13 another group I'm not going to follow through on</p> <p>14 something that would benefit my company because I'm</p> <p>15 tired of negotiating with you, that does not sound</p> <p>16 to me like a sensible approach.</p> <p>17 Q Listen to my question, I'm not sure</p> <p>18 you heard my question.</p> <p>19 Suppose Don Carty said I'm tired of</p> <p>20 negotiating with you and I'm going to let the</p> <p>21 Bankruptcy Court decide on the motion to invalidate</p> <p>22 your collective bargaining contract under Section</p> <p>23 1113 of the Bankruptcy Code, and instead of walking</p> <p>24 away from the transaction he just said, okay, I am</p> <p>25 not going to negotiate anymore, it's the point in</p>

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<p style="text-align: right;">89</p> <p>1 time where the court is about to rule on the motion 2 to invalidate the TWA collective bargaining 3 contract, isn't that a risk from that standpoint? 4 A Why wouldn't he just do that? 5 Q If the TWA pilots agreed, MEC agreed 6 to waive the scope, wasn't that also an alternative 7 that would have been a risk to the TWA pilots? 8 A Well, if I had been in Don Carty's 9 position I would have waited for the Bankruptcy 10 Court to as you say invalidate the scope and then 11 there wouldn't have been any problem and the merger 12 would have gone through and the American pilots 13 would have gotten, TWA pilots would have gotten 14 whatever American decided to give them. 15 Why wouldn't he do that? 16 Q My question to you, isn't that 17 possibility a risk also to the TWA pilots? 18 A I don't know how big a possibility it 19 is. Is it something about to happen and that 20 nothing can stop it and it's inevitable and it's 21 going to happen soon then yes it is risk. 22 If it is something that may or may not 23 happen or may be countered by a legal action on the 24 part of the TWA pilots, I don't know. I don't know 25 what the circumstances were so I can't assess the</p>	<p style="text-align: right;">91</p> <p>1 analysis that American Airlines was going through at 2 the time and you are not in a position to evaluate 3 the legal issues and the likelihood that the 4 Bankruptcy Court would make certain rulings, how can 5 you be so sure that Carty was bluffing and that the 6 third course of action was the best course? 7 A First of all, I'm not sure that Carty 8 was bluffing and he very well might have been 9 sincere. That's not the point. We don't know that. 10 To this day we don't know it. Only Don Carty knows 11 that. 12 All I'm saying is that there's no way 13 of knowing and since there isn't there is one way to 14 find out. That is the test the bluff. That would 15 have told us whether he was really bluffing or 16 sincere in calling off the merger because the pilots 17 wouldn't give up their scope. 18 Q Do you have any reason to think that 19 the lawyers and others who were advising TWA MEC on 20 April 2nd, 2001, were giving anything other than 21 their best advice, their honest advice about how to 22 handle the situation? 23 A I have no idea whether their advice, 24 it could have been sincere or they could have some 25 hidden agenda, I don't know. I have no idea.</p>
<p style="text-align: right;">90</p> <p>1 level of risk. 2 Q There was some risk that would happen? 3 MS. RODRIGUEZ: Is that a question? 4 MR. KATZ: Yes. 5 A If you say there is then I am not in a 6 position to dispute that. 7 The only question that I have is what 8 is the possibility of that happening and what is the 9 level of risk involved. 10 Q So we have got a negotiating situation 11 where the representatives of TWA pilots have a risk 12 that Carty is not bluffing and he is going to walk 13 away from the transaction, and there is also a risk 14 that Carty is not bluffing and he will simply turn 15 the issues over to the Bankruptcy Court who will 16 then likely invalidate their collective bargaining 17 contract? 18 MS. RODRIGUEZ: Objection to the 19 premise that they would invalidate the 20 collective bargaining contract. 21 Q The third possibility is he's bluffing 22 and he will come to terms with the TWA pilots if 23 they threaten to walk out or if they don't walk out. 24 Given that you have indicated you are 25 not really in a position to talk about the economic</p>	<p style="text-align: right;">92</p> <p>1 Q You mentioned Dr. Tannen's rightful 2 place proposal in your testimony earlier this 3 afternoon. 4 Are you saying that you thought that 5 American pilots should have given Professor Tannen's 6 proposal more consideration than they did? 7 A No. 8 Q What are you saying about American 9 pilots' response to the proposal? 10 A What I said before is that I believe 11 they were sincerely trying to find a way to make 12 this proposal work given the restrictions that they 13 had to work under but they couldn't do it because no 14 matter how, as Mickey Malerski said, no matter how 15 you slice it 800 TWA pilots are now going to head 16 the senior list. 17 I think the APA looked at that 18 proposal and I think they sincerely tried to make it 19 work, but given the constraints under which they 20 were operating they were not able to do so. 21 Q By the constraints they are operating 22 under, what are you referring to? 23 A The fact that their pilots were not 24 going to accept TWA pilots ahead of them on the 25 seniority list.</p>

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<p style="text-align: right;">93</p> <p>1 Q In fact, some 45 percent of the TWA 2 pilots ended up ahead of American pilots on the 3 list?</p> <p>4 A Yes, I am not sure that is the exact 5 number but I do know that some of the TWA pilots 6 were placed ahead of some of the American pilots, 7 yes.</p> <p>8 Q You don't know how many?</p> <p>9 A That's correct.</p> <p>10 Q Or exactly where they were?</p> <p>11 A That's correct.</p> <p>12 Q Why did APA bring in KPMG? Wasn't it 13 to do a similar analysis as to what Professor Tannen 14 did?</p> <p>15 A Why they did it I don't know, but the 16 end result was a proposal or analysis that was a 17 counterbalance to the Tannen proposal. An 18 alternative.</p> <p>19 Q Professor Tannen was retained and paid 20 by either the TWA pilot merger fund or the American 21 pilots- airline organization, wasn't it?</p> <p>22 A I have no idea who paid. I have no 23 idea.</p> <p>24 Q If he was going to be paid by some 25 representatives of the TWA pilots, do you think that</p>	<p style="text-align: right;">95</p> <p>1 A They gave no indication otherwise. 2 They seemed to treat him with respect and 3 consideration.</p> <p>4 Q So what were you saying about 5 Professor Tannen's report, you are surprised it 6 didn't lead to an agreement?</p> <p>7 A You often ask me if I'm surprised by 8 something and if you are asking me to go back five 9 years and ascertain my emotional state at the time, 10 it's very difficult.</p> <p>11 All I can tell you is that I think the 12 American pilots tried to find a way to use Tannen's 13 proposal for a deal that would be satisfactory to 14 both sides. They couldn't do it because it required 15 the placement of considerable numbers more of TWA 16 pilots ahead of APA pilots then they could accept.</p> <p>17 I think it was a political issue 18 because they just didn't believe their pilot group 19 would approve that sort of proposal.</p> <p>20 Q That wasn't ALPA's fault, was it?</p> <p>21 A No, I guess it wasn't ALPA's fault, 22 except that the way the negotiations began without 23 any leverage I think ALPA has to bear some 24 responsibility. So when they got into that 25 situation there was nothing, there was no leverage</p>
<p style="text-align: right;">94</p> <p>1 might have influenced the American pilots' 2 receptivity to his proposal?</p> <p>3 MS. RODRIGUEZ: Objection.</p> <p>4 Q You may answer the question if you 5 can.</p> <p>6 A I have no idea. They seemed to treat 7 it with respect and certainly they gave it serious 8 consideration.</p> <p>9 As I recall they sent a long, detailed 10 letter analyzing it almost line-for-line so it's not 11 as if they just sloughed it off.</p> <p>12 Q You used words like impartial when 13 referring to his report.</p> <p>14 If he was paid by representatives of 15 the TWA pilots, would that affect your view of 16 whether it was impartial or not?</p> <p>17 A My dealings with Professor Tannen 18 tells me that he would not do something, he would 19 not slant or distort a proposal simply to favor the 20 person who was paying him, that his intellectual 21 pride would prevent him from doing that.</p> <p>22 Q As a matter of negotiation, do you 23 think it's likely that the American pilots perceived 24 Professor Tannen was impartial if they felt he was 25 going paid by the other side?</p>	<p style="text-align: right;">96</p> <p>1 to apply.</p> <p>2 Q But that was all before you got into 3 the picture, wasn't it?</p> <p>4 A Correct.</p> <p>5 Q Did you ever go to Capitol Hill and 6 lobby for the Bond bill?</p> <p>7 A No.</p> <p>8 Q Were you involved in any way in the 9 lobbying effort?</p> <p>10 A No.</p> <p>11 Q Do you have any particular background 12 in legislative matters?</p> <p>13 A No.</p> <p>14 Q So when you talk about what ALPA did 15 or didn't do in the lobbying fund you are not really 16 talking about an issue that you have any particular 17 expertise in, are you?</p> <p>18 A As a citizen of the United States and 19 as one who was a history major and who reads the 20 newspapers and the magazines very carefully and has 21 kept up his studies of history, I'm aware of the 22 function of lobbying and the function it serves and 23 how it can often prove effective.</p> <p>24 It's my understanding one of the 25 functions of ALPA is to lobby Congress and whatever</p>

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<p style="text-align: right;">97</p> <p>1 legislative body is involved on behalf of the 2 pilots. So I am operating on the premise that ALPA 3 could put its experience in lobbying to help the TWA 4 pilots in this situation.</p> <p>5 Q Aren't you aware that under the 6 Railway Labor Act, ALPA's responsibility is to 7 negotiate collective bargaining agreements and 8 administer collective bargaining agreements?</p> <p>9 A No, I'm not aware of it.</p> <p>10 Q Are you aware that when pilots, like 11 former TWA pilots, resigned their membership and pay 12 only a service charge, that the costs of lobbying 13 are excluded from what they pay?</p> <p>14 A No, I'm not aware of that either.</p> <p>15 Q From that standpoint any money spent 16 by ALPA on lobbying or public relations are 17 considered outside of the scope of the union's 18 responsibility?</p> <p>19 A I'm not aware of it.</p> <p>20 Q In fact, are you aware that ALPA's 21 duty in their representation of the pilots it 22 represents goes to the matters in which it is acting 23 as an exclusive bargaining representative mainly in 24 the negotiation of contracts and the administration 25 of collective bargaining contracts?</p>	<p style="text-align: right;">99</p> <p>1 it.</p> <p>2 Q Have you testified about some labor 3 laws you disagree with today?</p> <p>4 A I don't know. It's possible because 5 as you say I'm unfamiliar with the scope of labor 6 laws, and maybe you were alluding to some aspect of 7 labor law that I wasn't familiar with.</p> <p>8 Q Let me ask you this. You mentioned in 9 your testimony earlier that you felt that ALPA 10 should have threatened to sue APA?</p> <p>11 A Yes.</p> <p>12 Q Did I understand you correctly?</p> <p>13 A You are correct.</p> <p>14 Q You are not aware of any legal theory 15 that ALPA could have used after April 2, 2001 to sue 16 APA, are you?</p> <p>17 A No, all I know is that anybody can sue 18 anybody at anytime, and it just seems to me that a 19 threatened lawsuit would have provided some modicum 20 of leverage.</p> <p>21 Q Even if the lawsuit was a frivolous 22 one; is that right?</p> <p>23 A Well, I think, as far as I know you 24 are not allowed to bring a frivolous suit, that the 25 courts will dismiss those out-of-hand, don't they?</p>
<p style="text-align: right;">98</p> <p>1 A No, there is a lot about ALPA that I 2 don't know.</p> <p>3 Q How labor law, you don't know that 4 either; isn't that true?</p> <p>5 A That's true, but in this case we are 6 not talking about labor law, we are talking about 7 basic negotiating principles.</p> <p>8 Q That may be what you are talking about 9 but this lawsuit is about labor law.</p> <p>10 A All I can talk about is what I am 11 familiar with.</p> <p>12 Q You don't mean to express any opinions 13 about labor law in anything you said today, do you?</p> <p>14 MS. RODRIGUEZ: Objection.</p> <p>15 Q You may answer if you can.</p> <p>16 A What was that question again?</p> <p>17 MS. RODRIGUEZ: The question is 18 argumentative. His testimony is his 19 testimony.</p> <p>20 Q In your testimony today you are not 21 meaning to express an opinion about labor law, are 22 you?</p> <p>23 MS. RODRIGUEZ: Objection.</p> <p>24 A Well, if there's a law, a labor law 25 that I disagree with I would have an opinion about</p>	<p style="text-align: right;">100</p> <p>1 Q Are you aware of any law about 2 threatening to file a lawsuit?</p> <p>3 A No, not at all.</p> <p>4 Q That's really where you were heading, 5 threatening a lawsuit?</p> <p>6 A Of course.</p> <p>7 Q You didn't intend it should actually 8 be filed?</p> <p>9 MS. RODRIGUEZ: Objection.</p> <p>10 A I don't know. If there's a basis for 11 filing such a suit why not.</p> <p>12 MR. KATZ: That's all I have, Mr. 13 Baehler.</p> <p>14 MS. RODRIGUEZ: I have a few questions 15 on redirect, Mr. Baehler.</p> <p>16 FURTHER EXAMINATION</p> <p>17 MS. RODRIGUEZ:</p> <p>18 Q I want to direct your attention, first 19 of all, to Exhibit 98 that Mr. Katz showed you.</p> <p>20 A Yes.</p> <p>21 Q The second part of the second 22 paragraph, it's not a paragraph but the second set 23 of writing on that document says paid by ALPA. 24 Do you see that?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">101</p> <p>1 Q Were you paid by ALPA because they</p> <p>2 viewed you as somebody helpful in the negotiations</p> <p>3 sort of an expert if you would like?</p> <p>4 MR. KATZ: Objection.</p> <p>5 How would this witness know what ALPA</p> <p>6 had in its mind? They paid him because they</p> <p>7 had a contract.</p> <p>8 Q You can go ahead. You can answer the</p> <p>9 question.</p> <p>10 A I would assume that ALPA agreed to</p> <p>11 retain me for eight days on the basis that I would</p> <p>12 be of some assistance to the merger.</p> <p>13 Q Assistance in what way?</p> <p>14 A In helping them achieve a negotiated</p> <p>15 result that everyone could live with.</p> <p>16 Q Mr. Katz asked you a bunch of</p> <p>17 questions about whether or not you are a lawyer or a</p> <p>18 labor law expert or whether or not you are an ALPA</p> <p>19 expert, a whole series, but you worked with TWA MEC</p> <p>20 over a period of 13 years; is that correct?</p> <p>21 A Correct.</p> <p>22 Q Over that 13 years did you develop an</p> <p>23 understanding at least on a common-sense kind of</p> <p>24 basis on the role of ALPA in negotiations?</p> <p>25 A I am not sure I understood their role</p>	<p style="text-align: right;">103</p> <p>1 there was nothing they said that indicated they were</p> <p>2 backing TWA against ALPA or against APA. It just</p> <p>3 wasn't there. I don't think that TWA should have</p> <p>4 had to go to ALPA and ask for assistance. I think</p> <p>5 they should have been volunteering assistance.</p> <p>6 Q Mr. Katz also talked to you quite a</p> <p>7 bit about the pending bankruptcy petition and</p> <p>8 whether or not the bankruptcy court would sell the</p> <p>9 contract in its entirety. The questions he asked</p> <p>10 you alluded to the fact that it was better to get</p> <p>11 something than nothing.</p> <p>12 Did the TWA pilots actually get</p> <p>13 anything concrete for waiving their scope rights?</p> <p>14 MR. KATZ: Objection.</p> <p>15 The witness doesn't have any basis to</p> <p>16 know.</p> <p>17 A From what I could see, no, no.</p> <p>18 Q The representations by Mr. Carty that</p> <p>19 he would use his best efforts, they didn't bear</p> <p>20 fruit, did they?</p> <p>21 A Not that I saw.</p> <p>22 Q I want to show you or direct your</p> <p>23 attention to Exhibit 100 that Mr. Katz showed you,</p> <p>24 and to paragraph, the second full paragraph.</p> <p>25 "Under those circumstances it was</p>
<p style="text-align: right;">102</p> <p>1 in terms of negotiations but the understanding that</p> <p>2 I developed was that ALPA was almost like the parent</p> <p>3 and the MEC was the child. But in this case the</p> <p>4 child was paying money to the parent and the parent</p> <p>5 was exercising some supervision over the child.</p> <p>6 Now exactly what that supervision was</p> <p>7 and what the legal requirements were or weren't, I</p> <p>8 don't know, but there was a clear understanding on</p> <p>9 my part anyway, that the TWA pilots had to act in</p> <p>10 ways that were consistent with the rules and</p> <p>11 regulations that were established by ALPA.</p> <p>12 At the same time, ALPA had a</p> <p>13 responsibility to look out for the interests of the</p> <p>14 TWA pilots and that when it came time to negotiate</p> <p>15 with another pilot group who was not part of ALPA,</p> <p>16 that ALPA should have been behind TWA in every way</p> <p>17 that one could imagine professionally and with</p> <p>18 whatever resources they had, with whatever skills</p> <p>19 and ability they had to function on behalf of the</p> <p>20 TWA pilots.</p> <p>21 If it involved threatening a lawsuit</p> <p>22 why not. There is nothing wrong with that. It just</p> <p>23 gives -- what I didn't see from ALPA was even an</p> <p>24 attitude that TWA should receive assistance. When</p> <p>25 Duane Worth and Kevin Dillon sat in on that date</p>	<p style="text-align: right;">104</p> <p>1 impossible for APA or its board to agree to any</p> <p>2 substantive concessions beyond their last offer in</p> <p>3 Chicago."</p> <p>4 Do you see that last sentence?</p> <p>5 A Yes.</p> <p>6 Q ALPA didn't do anything to help that</p> <p>7 situation, did they?</p> <p>8 A Not that I saw.</p> <p>9 Q Because by this point in October 2001</p> <p>10 they had already given up those leverages, isn't</p> <p>11 that correct?</p> <p>12 A Yes.</p> <p>13 Q So during the whole time of the</p> <p>14 negotiation the TWA MEC negotiating merger committee</p> <p>15 was negotiating from a position of weakness; isn't</p> <p>16 that correct?</p> <p>17 A Extreme weakness. I only saw, the</p> <p>18 only contact that I saw with ALPA headquarters was</p> <p>19 when Duane Worth and Kevin Dillon came down on that</p> <p>20 day, and on that day all I saw was this distant,</p> <p>21 arm's length approach that ALPA had. I didn't see</p> <p>22 any indication that they were actively involved or</p> <p>23 cared to be involved in assisting TWA in this</p> <p>24 situation.</p> <p>25 MS. RODRIGUEZ: I have no further</p>

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<p style="text-align: right;">105</p> <p>1 questions.</p> <p>2 FURTHER EXAMINATION</p> <p>3 MR. KATZ:</p> <p>4 Q How would you compare that to merger</p> <p>5 negotiations you participated in?</p> <p>6 A I wouldn't.</p> <p>7 Q Why not?</p> <p>8 A Because there weren't any others.</p> <p>9 Q So you weren't involved when the APA</p> <p>10 pilots agreed to, were trying to integrate their</p> <p>11 seniority with American Airlines?</p> <p>12 A No, there were none previous and we</p> <p>13 don't have to go through a bunch of others.</p> <p>14 Q You have no basis to compare what you</p> <p>15 saw to anything that was happening?</p> <p>16 A Not to compare to any other airlines</p> <p>17 mergers, correct.</p> <p>18 Q You have no idea what the people from</p> <p>19 the national office did or didn't do in connection</p> <p>20 with other seniority integration negotiations?</p> <p>21 A Correct.</p> <p>22 Q Ms. Rodriguez asked you about what</p> <p>23 good came out of the waiving of the scope, and I'm</p> <p>24 going to show you an Exhibit marked 15, ALPA Exhibit</p> <p>25 15, at the Sally Young deposition.</p>	<p style="text-align: right;">107</p> <p>1 A Yes, you did.</p> <p>2 Q He listed the advisors to the MEC,</p> <p>3 bankruptcy counsel, merger counsel and investment</p> <p>4 advisor, former ALPA president and ALPA staff; is</p> <p>5 that correct?</p> <p>6 A Correct.</p> <p>7 Q He says the alternative -- go ahead</p> <p>8 and read. All set? I'll try to read slowly because</p> <p>9 I know it's hard to keep up when I'm reading</p> <p>10 something from a written page.</p> <p>11 In the paragraph immediately before</p> <p>12 Captain Pastor lists what we gained and he talks</p> <p>13 about the other alternative of an 1113 fight in</p> <p>14 court, right?</p> <p>15 A Yes.</p> <p>16 Q He says that the court has thus far</p> <p>17 sided with TWA and American on virtually every</p> <p>18 important issue.</p> <p>19 You are not aware of anything that</p> <p>20 would contradict Captain Pastor on that point, are</p> <p>21 you?</p> <p>22 A No.</p> <p>23 Q He says that if that "If we did not</p> <p>24 agree to the new collective bargaining agreement</p> <p>25 with TWA Airlines, LLC, and the court granted the</p>
<p style="text-align: right;">106</p> <p>1 This is an e-mail that was sent by Bob</p> <p>2 Pastor the day after the scope waiver.</p> <p>3 MS. RODRIGUEZ: Do you have a copy of</p> <p>4 that?</p> <p>5 MR. KATZ: I have just one copy of</p> <p>6 that.</p> <p>7 MS. RODRIGUEZ: Could I see that before</p> <p>8 you show it to the witness?</p> <p>9 MR. KATZ: Sure.</p> <p>10 Q So Bob Pastor sent this to all TWA</p> <p>11 pilots on April 3rd, 2001, the day after the scope</p> <p>12 waiver, and in here he says that he's going to talk</p> <p>13 about the provisions that were agreed to. On the</p> <p>14 second page he summarizes the agreement with TWA</p> <p>15 Airlines, LLC.</p> <p>16 Do you see that?</p> <p>17 A You show me what I'm supposed to look</p> <p>18 at it here.</p> <p>19 Q Agreement with TWA Airlines, LLC.</p> <p>20 A Right.</p> <p>21 Q He says "MEC voted to enter into a new</p> <p>22 transition agreement with TWA Airlines, LLC rather</p> <p>23 than allow the courts to strip away all of your</p> <p>24 contractual rights".</p> <p>25 Did I read that correctly?</p>	<p style="text-align: right;">108</p> <p>1 TWA's 1113 motion as expected, we would lose all of</p> <p>2 our contractual rights including our scope."</p> <p>3 That's what Captain Pastor says, isn't</p> <p>4 it?</p> <p>5 A Yes.</p> <p>6 Q Below he lists the things that were</p> <p>7 gained, and contrary to what you said a minute ago</p> <p>8 there were quite a few things that he listed?</p> <p>9 A He listed some things, yes.</p> <p>10 Q He says there was a guarantee of</p> <p>11 hiring of all eligible TWA pilots was something that</p> <p>12 was gained.</p> <p>13 That's correct, isn't it, as far as</p> <p>14 you know?</p> <p>15 A Well, the key phrase is all eligible.</p> <p>16 Who is eligible? What does that mean.</p> <p>17 Q Do you know of any TWA pilots who</p> <p>18 didn't get hired at American?</p> <p>19 A What they are saying is that the jobs,</p> <p>20 he said you are still going to have your job.</p> <p>21 Q Isn't that something?</p> <p>22 A If you assume that all jobs will be</p> <p>23 lost unless this is done then yes this is a gain,</p> <p>24 but what I am saying is I don't know that giving up</p> <p>25 scope meant the only way to save all those jobs.</p>

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<p style="text-align: right;">109</p> <p>1 Q Captain Pastor also says, Mr. Baehler, 2 that the agreement allowed the TWA pilots to retain 3 their September 1, 2001 pay raises? 4 A So they kept their jobs with the same 5 pay. 6 Q Are we are talking about a pay raise? 7 A A pay raise is what they got. As of 8 September 1st they will have their jobs as of the 9 September 1st pay scale, yes. 10 That is what they had. They didn't 11 get anything extra. What this said is American is 12 hiring the TWA pilots on the same basis on which 13 they were presently operating. 14 Q Doesn't it also say they will get 15 \$12 million paid in late and outstanding debt 16 payments? 17 Those are pensions that were not paid 18 by TWA? 19 A Okay. 20 Q That's something they didn't have, 21 isn't it? 22 A Apparently, okay. 23 Q It also says that they were to get a 24 guarantee of going to the American pay rates by 25 January 2002, and they didn't have that without the</p>	<p style="text-align: right;">111</p> <p>1 not acceptable then the pilots have got some real 2 problems. 3 This is an attempt to get the pilots 4 to accept this deal and live with it. It doesn't 5 mean it reflects exactly what was happening. 6 Q On this part that is marked with a 7 bracket on the right of the letter on page three, 8 Pastor said "I don't want to minimize what we have 9 lost, through no fault of our own we were forced to 10 give our scope at the same time we were faced with 11 negotiating a fair and equitable senior integration 12 with the APA." This is the point you have been 13 talking about all through the day. 14 He then says "The alternative was to 15 have everything taken away as a result of the 16 American acquisition and still be faced with the 17 need to negotiate with the APA." 18 Don you agree with Captain Pastor 19 there? 20 A No, because what he is saying is that 21 we have no choice and that the reason we are in the 22 situation we are because we have no choice, that we 23 had to give up our scope, and as I said if I were in 24 his position once it was done I would put the best 25 upon face on it also and that's what he's doing.</p>
<p style="text-align: right;">110</p> <p>1 agreement? 2 A That's correct. 3 Q That was a pay raise, wasn't it? 4 A That's correct. That's correct. 5 Q They got this promise from American to 6 use American's best efforts and that's the one you 7 were dismissive about earlier? 8 A Correct. 9 Q But you are aware that the board of 10 adjustment is shared by Richard Bloch? 11 A Now. 12 Q You are aware that the assistant board 13 of adjustment chaired by Rich Bloch, the LLCH found 14 that American did use its reasonable best efforts? 15 A I'm not aware of, no. 16 Q So there were some gains as a result 17 of this agreement, weren't there? 18 A Mr. Katz, in short, this is a letter 19 from the chairman of the MEC to the entire pilot 20 group at TWA to inform them about a very bad deal, 21 and he put the best possible face on that deal. 22 And if I were in his position I would 23 have done exactly that. I would have listed all the 24 things, real or imaginary, that were gained and I 25 would have made it look acceptable because if it's</p>	<p style="text-align: right;">112</p> <p>1 That doesn't change the fact that when 2 the scope was given all leverage in the negotiations 3 was lost. 4 Q Captain Pastor understood that, didn't 5 he? 6 A I don't know what he understood. 7 Q You read excerpts from his letter of 8 April 3rd, and doesn't it seem to recognize he has 9 given up the leverage? 10 MR. KATZ: Objection. 11 A He recognizes it in a letter that is 12 designed to win the support of the pilots for a very 13 bad deal. 14 Q You can't show me anything in that 15 letter that you disagree with you, can you? 16 MR. KATZ: Objection. 17 He doesn't have the letter and he 18 hasn't studied it. 19 A If you say anything in the letter, I 20 would have to go through the letter and study it and 21 see if there isn't something I disagreed with. 22 Q As to the points we just covered? 23 A Well, how can you disagree with 24 something that is designed to make other people 25 accept something that maybe shouldn't have happened.</p>

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<p style="text-align: right;">113</p> <p>1 I don't know. I don't know.</p> <p>2 All I can tell you is that in his</p> <p>3 situation if I had been party to a deal as bad as</p> <p>4 that I would have written exactly that same sort of</p> <p>5 thing, and I would have tried to find things that</p> <p>6 would look good, and I would also admit that there</p> <p>7 were things that were given up because everyone</p> <p>8 knows that. That's no concession, that is obvious.</p> <p>9 So the question is what can we say to</p> <p>10 these pilots so they will get them to accept the</p> <p>11 deal that was done and that is what the letter was</p> <p>12 designed to do and it was done very well.</p> <p>13 Q Let me conclude with some conclusions</p> <p>14 about what we are talking about.</p> <p>15 Did you ever advise people who are in</p> <p>16 negotiating situations where they have to pick</p> <p>17 between the least bad of bad choices?</p> <p>18 Did that ever come up?</p> <p>19 A Sure.</p> <p>20 Q When someone makes a choice like that,</p> <p>21 picking the lesser of two evils, don't you think if</p> <p>22 they are adults and they are mentally competent they</p> <p>23 have to live with the consequences of their</p> <p>24 decision?</p> <p>25 MS. RODRIGUEZ: Objection.</p>	<p style="text-align: right;">115</p> <p>1 JURAT</p> <p>2</p> <p>3 I, _____, the witness herein, do hereby</p> <p>4 certify that the foregoing testimony of the pages of</p> <p>5 this deposition to be a true and correct transcript,</p> <p>6 subject to the corrections, if any, shown on the attached</p> <p>7 page.</p> <p>8</p> <p>9 _____</p> <p>10</p> <p>11 JAMES BAEHLER</p> <p>12</p> <p>13 Subscribed and sworn to before me</p> <p>14</p> <p>15 this _____ day of _____, 200_</p> <p>16</p> <p>17 _____</p> <p>18</p> <p>19 NOTARY PUBLIC</p> <p>20</p> <p>21 _____</p> <p>22</p> <p>23 NOTARY PUBLIC OF THE State of: _____</p> <p>24</p> <p>25 My commission expires: _____, 20__.</p>
<p style="text-align: right;">114</p> <p>1 A I will tell you that's so theoretical</p> <p>2 I'm not sure I know how to answer that.</p> <p>3 MR. KATZ: I have nothing further for</p> <p>4 Mr. Baehler at this time.</p> <p>5 MS. RODRIGUEZ: I have no further</p> <p>6 questions.</p> <p>7 THE VIDEOGRAPHER: This concludes our</p> <p>8 deposition. We are going off the record.</p> <p>9 It's five minutes after two o'clock.</p> <p>10 (2:05 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">116</p> <p>1 ERRATA SHEET FOR THE TRANSCRIPT OF:</p> <p>2 Case Name: Bensel v Airline Pilots</p> <p>3 Dep. Date: 12/18/06</p> <p>4 Deponent: James Baehler</p> <p>5 Pg. Ln. Now Reads Should Read Reason</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 SUBSCRIBED AND SWORN BEFORE ME</p> <p>23 THIS _____ DAY OF _____, 2006</p> <p>24</p> <p>25 (Notary Public) MY COMMISSION EXPIRES: _____</p>

JAMES BAEHLER

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CERTIFICATE

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, JUDITH A. FROST, a Shorthand Reporter
and Notary Public within and for the State of New
York, do hereby certify:

That JAMES BAEHLER, the witness whose
deposition is hereinbefore set forth, was duly sworn
by me, and that this transcript of such deposition
is a true record of the testimony given by the
witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 3rd day of January, 2007.

JUDITH A. FROST